

Eighth Supplement to Memorandum 94-11

Administrative Adjudication: Exemption Request of Public Utilities Commission

Attached is a letter from the Public Utilities Commission requesting exemption from the new Administrative Procedure Act (Exhibit, pp. 1-20). Also attached are statutes governing PUC hearing procedures (Exhibit, pp. 21-26). Under existing law, the PUC is not subject to the APA. See Gov't Code § 11501.

The Public Utilities Commission is established by the California Constitution. The PUC "may establish its own procedures," subject to statute and due process. Cal. Const. Art. XII, § 2. The PUC has express constitutional authority to "fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, [and] punish for contempt." *Id.* § 6. As noted in the letter from the PUC, these constitutional provisions would control over inconsistent provisions in the proposed new APA concerning subpoenas, oaths, and contempt. If the APA is to be applied to the PUC, therefore, at least some existing Public Utilities Code sections on these subjects would have to be retained. For example, the statute permits the PUC to punish for contempt (Pub. Util. Code §§ 312, 728.5 — Exhibit, p. 22), while the new APA gives this authority to the superior courts. The subpoena authority in the PUC's statute appears consistent with the new APA. *Compare* Pub. Util. Code § 728.5 (Exhibit, p. 22) *with* proposed Gov't Code §§ 645.410-645.440. The same appears true with respect to administering oaths. *Compare* Pub. Util. Code §§ 311, 728.5 (Exhibit, pp. 21-22) *with* proposed Gov't Code § 648.330.

More problematic is the PUC's argument that its individualized ratemaking and initial licensing cases involve facts that are more legislative than adjudicative in character: These cases "rely in large part on legislative facts, the kind of facts that are useful for predicting future events and establishing the rules and rates that a utility should observe in the future, or deciding whether it is desirable for a utility to build additional facilities or for an additional utility to be granted a license." (Exhibit, p. 2.) Professor Asimow recommended the new APA "should clarify whether individualized ratemaking (i.e. setting prices for a specific entity

based on its particular circumstances) is adjudication or rulemaking." The 1981 Model State APA

classifies individualized ratemaking as adjudication as did the 1961 Model Act. . . . The federal act treats it as rulemaking . . . as does California case law. *Consumers Lobby Against Monopolies v. PUC*, 25 C3d 891, 160 CR 124 (1979), (holding 4-3 that order fixing future rates is "legislative"). Since procedural due process apparently applies to the factual determinations inherent in individualized ratemaking, a new APA should define it as adjudication, but should permit the use of conference hearings to avoid unnecessary trial-type formality.

Asimow, *Administrative Adjudication: Structural Issues*, at 74 n.159 (October 1989).

Conference adjudicative hearings are permitted by the draft statute. These are simplified hearings with no prehearing conference or discovery. The presiding officer limits witnesses, testimony, evidence, rebuttal, and argument, and cross-examination is ordinarily not permitted. Professor Asimow suggests the conference procedure is well-suited for individualized ratemaking cases. He would provide that generic issues arising during adjudication can be split off from the pending adjudication and resolved through rulemaking. *Id.* at 75 n.160. One may conclude that the mere fact a PUC hearing involves predominantly legislative facts is not itself a compelling justification to exclude it from coverage of the APA.

The PUC argues vigorously and in detail that the comprehensive procedural rules in the Public Utilities Code are better suited to its needs than the proposed new APA. The PUC wants to continue its "longstanding practice" of assigning one or more Commissioners and an ALJ to each proceeding. The PUC points out that under Public Utilities Code Section 311(d), only the Commission and not an ALJ can issue a final decision. But this is consistent with the proposed new APA. See proposed Sections 649.110, 649.140, 649.210-649.240.

The PUC argues that it needs its expedited procedures under Public Utilities Code Section 325 in the event of a natural disaster. The proposed new APA permits emergency decisions in circumstances defined by agency regulation. But the PUC argues that its current authority is not subject to all the restrictions of the APA provisions.

Public Utilities Code Section 454(c) permits individual public utility customers to testify at rate hearings. The new APA permits a party to call and examine witnesses, but the presiding officer may exclude evidence if its probative value is outweighed by the probability that it will be too time-consuming or confusing. The PUC believes the APA provision does not clearly enough protect the right of utility customers to testify at rate hearings.

Public Utilities Code Sections 1006, 1034, 5379.5, and 7726 give the PUC power to issue a cease and desist order, with or without notice, against an entity operating without the necessary certificate or permit. The emergency hearing provisions of the new APA require written or oral notice "if practicable." The PUC argues that it needs to keep its present cease and desist powers.

Public Utilities Code Sections 1033.7, 1070.5, 3774.5, 4022, 5285.6, 5378.5, and 5378.6 require the PUC, pending a hearing, summarily to suspend or revoke the operating authority of a motor carrier upon receipt of a recommendation from the California Highway Patrol where the carrier has consistently failed to abide by certain safety regulations, presents an imminent danger to public safety, or has failed to enroll all drivers in the pull notice system. The PUC argues that the emergency decision provisions of the new APA does not adequately cover all these situations. It does cover the imminent danger to public safety case but not the other two, and does not contemplate the initiating recommendation to be made by one agency (the CHP) and the suspension by another (the PUC).

Public Utilities Code Sections 1033.8, 1070.6, 3774.6, 5285.5, and 5378.7 require the PUC summarily to suspend or revoke the operating authority of a motor carrier that has not paid a judgment in favor of an employee. The PUC argues this is not adequately covered by the emergency decision provisions of the new APA, and that it is hard to justify the more complex emergency decision procedures where the only factual issue is whether an unsatisfied judgment exists.

Public Utilities Code Sections 1207-1213 provide procedures for determining just compensation for the taking or damaging of property in connection with a railroad grade separation project. The PUC argues that many of the procedures are unique to these proceedings. Under Section 642.110 of the new APA, the PUC could probably duplicate these provisions in its own regulations. Or these Public Utilities Code sections could be left intact, and would then control over the APA under Section 612.150 ("a statute expressly applicable to a particular agency prevails over a contrary provision" of the APA).

Other arguably unique Public Utilities Code provisions are detailed in the Exhibit at pages 18-20. The PUC concludes that

numerous procedural provisions of the Public Utilities Code would have to be retained even if the PUC were made subject to the proposed new APA. Thus, rather than simplifying and clarifying the procedural rules applicable to PUC proceedings, subjecting the PUC to the proposed new APA would complicate, and make it more difficult to determine, the procedural rules applicable to PUC proceedings.

If the APA is applied to the PUC and the Public Utilities Code provisions are also retained, there may be little of the APA that will apply to PUC proceedings. On the other hand, if the Commission proposes to apply the APA to the PUC and to repeal these extensive Public Utilities Code provisions over the objection of the PUC, we may have an uphill battle in the Legislature.

The staff is inclined to grant the PUC's request to be exempted from the new APA, as it presently is under the existing APA, by amending Section 1701 of the Public Utilities Code:

Pub. Util. Code § 1701 (amended). Rules of procedure

1701. All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission. Part 4 (commencing with Section 641.110) of Division 3.3 of Title 1 of the Government Code does not apply to a hearing or other proceeding under this part.

Comment. Section 1701 is amended to add the last sentence to make clear that the adjudicative provisions of the Administrative Procedure Act do not apply to a hearing or other proceeding under the Public Utilities Act. Nothing in this section is intended to excuse compliance with procedural protections otherwise required by due process of law.

Respectfully submitted,

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PUBLIC UTILITIES COMMISSION

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Attn: Nathaniel Sterling, Executive Secretary

Comments of the Legal Division of the Public Utilities Commission
on the Tentative Recommendation on Administrative Adjudication

Dear Commissioners and Mr. Sterling:

The following are the comments of the Legal Division of the California Public Utilities Commission (PUC or Commission) on the California Law Revision Commission's tentative recommendation on administrative adjudication (proposed new APA).

The work of the PUC is quite different from that of most other state agencies. Because of its unique responsibilities, the PUC's specialized procedures are established by comprehensive legislation contained in the Public Utilities Code, and pursuant to the PUC's constitutional authority to establish its own procedures (subject to due process and statute). (See Cal. Constitution, art. XII, §2.) It therefore is not appropriate to include the PUC within the scope of a single statute to govern administrative adjudication by state agencies generally.[1]

Throughout the course of the Law Revision Commission's study of administrative adjudication, we have pointed out that the PUC's work is so different from that of most other agencies that the PUC's "adjudications" should not be governed by rules written for other agencies. We acknowledge that some flexibility has been built into the proposed new APA, and that some proposals that we objected to earlier have been modified or not incorporated into the proposed new APA. Still, as explained in greater detail below, we continue to be of the view that procedures that can be incorporated into a single Administrative Procedure Act which may be appropriate for the kind of cases typically handled by other state agencies simply will not work at the PUC.

1 Accordingly, we agree that the work of the PUC's Administrative Law Judges (ALJs) should not be shifted to a central panel. The use of central panel judges would deprive the PUC of necessary expertise and control over its own workload.

The treatment of individualized ratemaking[2] and initial licensing cases under the proposed new Administrative Procedure Act (APA) most readily demonstrates the inappropriateness of subjecting the PUC's "adjudications" to the proposed new APA. (Individualized ratemaking and initial licensing cases comprise a large portion of the PUC proceedings that would be covered by the proposed new APA.) The proposed new APA would treat these cases as "adjudications" (see Comment to §610.310), and generally subject them to the same procedural requirements as would apply, for example, to unemployment and workers compensation benefit cases.[3] Such benefit cases look primarily at what happened sometime in the past (adjudicative facts). On the other hand, individualized ratemaking and initial licensing cases rely in large part on legislative facts, the kind of facts that are useful for predicting future events and establishing the rules and rates that a utility should observe in the future, or deciding whether it is desirable for a utility to build additional facilities or for an additional utility to be granted a license.[4]

The California Supreme Court has repeatedly recognized the legislative character of PUC ratemaking cases. "In adopting rules governing service and in fixing rates, [the PUC] exercises legislative functions delegated to it and does not, in so doing, adjudicate vested interests or render quasi-judicial decisions . . ." (Consumers Lobby Against Monopolies v. Public Utilities Commission (1979) 25 Cal. 3d 891, 909 quoting Wood v. Public Utilities Commission (1971) 4 Cal. 3d 288, 292.) "The commission's primary task is to assimilate [the views of the various parties] into a composite 'public interest'". (25 Cal.3d at 909.) Thus policymaking assumes a predominant role in such cases, as it does in a broad range of PUC proceedings. We submit that it is inappropriate to subject such cases, where legislative

2 "Individualized ratemaking" refers to the setting of rates for a specifically named utility.

3 The federal APA, on the other hand, defines ratemaking as "rulemaking" (see Comment to § 610.310).

4 Such an initial licensing case is not like a case concerning whether an individual should be granted a professional license. In a professional license case primarily adjudicative facts are at issue: does the applicant meet the minimum training and competency standards, or has the applicant committed some act that disqualifies him from receiving a license, etc.

facts are most prominent, to procedures designed for cases that look mostly at adjudicative facts, such as benefit determination cases.

In several instances, the proposed new APA seeks to shift authority from the agency head to the administrative law judge (ALJ). See, for example, §649.150, allowing an ALJ's proposed decision to become a final decision without affirmative action by the agency head. See also §§649.230(c), 649.240(a)(2), requiring that a remand generally be to the ALJ who originally heard the case. While it can be argued that such procedures are appropriate where a decision primarily determines adjudicative facts, they are clearly inappropriate in cases where legislative facts and policymaking functions are predominant. The Public Utilities Commission (and not its ALJs) has been given policymaking authority by the State Constitution and the Legislature. Thus, for example, if the Commission wishes to remand a case for further proceedings, and it believes that the case should not go back to the original ALJ because of policy disagreements between that ALJ and the Commission, the Commission should be free to reassign it to a different ALJ.

The constitutional and statutory provisions governing the PUC further demonstrate that it is different than most other state agencies. Thus, the PUC is a constitutionally created agency. (See Cal. Constitution, art. XII.) In addition to the specific powers granted the PUC by the Constitution and statute the PUC "may supervise and regulate every public utility in the State and may do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (Public Utilities (P.U.) Code §701.) In order not to unduly restrict the PUC in its exercise of these powers, the Legislature has generally exempted the PUC from the rulemaking provisions of the existing APA (see Government Code §11351) and has provided for direct review of PUC decisions by the California Supreme Court (see, e.g., P.U. Code §1759). These provisions all recognize the PUC's need for a broad range of flexibility in order to successfully regulate in a timely manner the safety and economics of major utility industries. As further demonstrated in the specific comments below, subjecting the PUC to the proposed new APA would unnecessarily and unduly interfere with the PUC's ability to perform its duties.

Comments on Specific Sections of the Proposed New APA

Sections 610.190 & 610.460: The definitions of "agency" and "party" are highly confusing as they might apply to the PUC. The PUC is clearly an agency under 610.190 and appears to be "the agency that is taking action" under 610.460. However, the PUC is not a party to proceedings before the Commission. (Cf. §610.460 "party . . . includes the agency that is taking action".)

Typically, one of the PUC's staff Divisions (e.g. the Division of Ratepayer Advocates (DRA) or the Transportation Division) appears as a party in Commission proceedings.[5] Moreover, it is not clear whether the DRA is an "agency". An administrative unit within an agency can itself be an agency "[t]o the extent it purports to exercise authority pursuant to any provision of this division". Because the DRA has no authority to issue decisions or take other similar action it does not appear to fit within the definition of agency. Because these key definitions are unclear and do not comport with the reality of practice at the PUC, it is sometimes unclear how operative sections of the proposed new APA are supposed to apply to the work of the PUC.[6]

Section 610.310: As discussed above, this section is overbroad. Furthermore, the Comment suggests that PUC ratemaking and licensing actions of general application addressed to all members of a class are subject to the APA's rulemaking provisions. Such PUC actions are not currently subject to the APA, nor would the current recommendation make them subject to the APA's rulemaking provisions.

Section 641.110(a): states that an "agency shall conduct a proceeding under this part . . . [before] issuing a decision for which a hearing or other adjudicative proceeding is required . . ." However, the term "adjudicative proceeding" is not defined, leaving the meaning of this provision in some doubt.

Sections 641.310 - 641.380: The word "section" in §641.310(c) should be replaced by the word "article". When there is other express statutory authority for an emergency decision, that other section should govern the proceedings. Compare §612.150 (contrary express statute controls).

The PUC is directed by existing statutes to summarily suspend or revoke the operating authority of motor carriers: (1) upon receipt of written recommendation from the California Highway Patrol (CHP) that the motor carrier has consistently failed to abide by certain safety regulations or that the carrier's operations present an imminent danger to public safety (see, e.g., Public Utilities (P.U.) Code §1070.5); and (2) when the motor carrier has failed to pay a final judgment to an employee pursuant to §3716.2 of the Labor Code (see, e.g., P.U. Code

5 However, in many complaint proceedings only the utility and the private complainant are parties and staff does not participate.

6 See, e.g., proposed §648.520(a)(1), (b)(1) referring to "an employee of an agency that is a party".

§1070.6). (See the discussion below as to why these P.U. Code sections should be retained.) It is unclear how these statutes would interact with these sections of the proposed new APA if the change in §641.310(c) suggested in the preceding paragraph is not made. The proposed new APA should make it clear that an agency granted emergency-type powers by another statute can follow the procedures required by that statute, without having to comply with additional restrictions that might be required if it were acting under these provisions of the APA.

In addition, §641.380 of the proposed new APA appears inconsistent with current law which vests exclusive power to review the PUC's decisions with the Supreme Court. (See P.U. Code §1759.) [7]

Section 642.240: The Comment to this section indicates that an agency not required to use Office of Administrative Hearings ALJs may make the section inapplicable by issuing a regulation. However, the text of subsection (a) is less clear. A requirement to issue regulations establishing timelines for processing applications may make sense for agencies that handle a specific number of routine kinds of applications. However, the PUC handles a nearly infinite variety of applications. Even just in the area of ratemaking, applications can run the gamut from: (a) a relatively simple application by a small water company to increase its rates to reflect increased costs for the water it buys; to (2) a very complex application by a large gas and electric utility to restructure the way the PUC sets its rates to incorporate more incentives. Thus in this area, as well as many others, the PUC has a unique need for flexibility.

Section 643.130: This section would apparently authorize the Governor to appoint a substitute PUC Commissioner if the PUC was unable to take action in a proceeding because of the disqualification or unavailability of a Commissioner or Commissioners. To the extent that this section would authorize such a substitute PUC Commissioner, it would appear to violate Section 1 of Article XII of the California Constitution. That section of the Constitution requires Senate confirmation of a PUC Commissioner, establishes a 6 year term for Commissioners, provides that a vacancy is filled for the remainder of the term, and establishes the procedures and circumstances under which the Legislature may remove a Commissioner.

7 The tentative recommendation currently before the Law Revision Commission does not propose to change this statute.

Section 643.330(a)(4), (5): These subsections allow a person who has served, or is now serving, as an investigator or advocate in a nonprosecutorial proceeding to provide advice to the presiding officer or a reviewing authority "provided the content of any advice is disclosed on the record and all parties have an opportunity to comment on the advice." The quoted provision will interfere with the PUC's ability to issue rate case decisions. Typically, major rate case decisions are issued just before the end of the year, so that new rates can go into effect on the first of the year. In the course of compiling the final numbers for the decision, it is often necessary to consult with technical personnel in order to calculate the impact of particular policy decisions on rates. The PUC normally relies on its separate advisory staff (Commission Advisory and Compliance Division or CACD) to provide such advice. However, due to staff rotation and the long-running nature of some rate case proceedings, personnel currently working in CACD may have previously worked on the same case while serving in the advocacy staff (Division of Ratepayer Advocates or DRA).[8] In addition, some technical expertise may reside only with the staff currently working on the case for DRA. While these subsections would authorize the ALJ or the Commission to obtain the advice they need, they could only do so if the content of the advice is disclosed on the record with an opportunity for all parties to comment. The delay this would create would make it impossible for the Commission to issue rate case decisions in a timely manner.

Furthermore, the requirement that the advice be disclosed on the record would have the effect of making public the Commission's internal deliberative processes. For example, consider the situation where the Commission asks an advisor who would be covered by these provisions what the impact of a particular policy decision would be on the various calculations that appear in the appendices to a Commission rate decision. Presumably, in order to comply with the quoted requirements of these subsections the advisor would have to disclose both the question she was asked and the various numbers that she advised the Commission should be included in particular places in the

8 In some areas, for example certain licensing issues handled by the PUC's Transportation Division, there is not a complete separation of functions at the PUC. This reflects the need for administrative efficiency (consider the difficulties of having two staff members familiar with all matters), which sometimes conflicts with the perfection the proposed new APA seeks.

various tables.[9] This would have the effect of revealing to the parties the policy decision that the Commission was contemplating making. We submit that it is inappropriate to require an ALJ or the Commission to reveal its internal deliberations about what policy decisions ought to be made.

There are likely to be several other untoward impacts of the above-quoted requirements. First, a disclosure like that described in the preceding paragraph is likely to engender comments not so much on the accuracy of the calculations made by the advisor, but more about the wisdom of making the policy decision the Commission was contemplating. This intervention is simply unnecessary and will engender delay. Second, besides the highly technical advice provided by CACD, that Division also provides the ALJ and the Commissioners with policy advice. As explained above, the requirement that the advice given by the advisor be disclosed on the record will have the effect of revealing the Commission's internal thought processes. Accordingly, the Commission will likely never want to get policy advice from a CACD employee who is subject to these disclosure provisions. Rate cases can continue for seven years or longer and are often consolidated with other proceedings involving the same utility or other utilities in the same industry, and can come to involve multiple issues besides the ones on which a particular staff member once worked for DRA. Nevertheless, if such an employee moved from DRA to CACD, the employee would not be able to provide advice in that proceeding (including any "adjudicative" proceedings consolidated with it), unless that employee's advice is disclosed on the record. That employee, because she is familiar with the industry involved, may be the most expert person to advise the ALJ or Commissioner. Nevertheless, because requesting advice from that person will wind up revealing the policy direction being considered by the ALJ or Commissioner, the advice may well not be requested. In short, these provisions will encourage the Commission to make inefficient use of its staff expertise and discourage the Commission from providing for staff rotations that help to develop expertise. These provisions will add nothing to the fairness of the PUC's existing procedures, which are already controlled by an ex parte rule.

Section 643.340: The language of this section is unclear. This section should not apply to nonprosecutorial proceedings where ex parte contacts are permitted. Nor should it prohibit CACD personnel who may have received an ex parte contact from

9 The need to make such disclosures would be cumbersome and time consuming and would tend to delay the Commission's decisionmaking process.

providing advice on the request of a Commissioner. Such provisions would prevent the PUC from taking advantage of the in-house staff advice needed to decide cases accurately and in a timely fashion. The PUC's existing ex parte rule provides sufficient fairness protections.

Section 644.110: This provision could unduly limit public participation in Commission proceedings. Rule 54 of the Commission's Rules of Practice and Procedure currently provides:

Participation Without Intervention.

In an investigation or application proceeding, or in such a proceeding when heard on a consolidated record with a complaint proceeding, an appearance may be entered at the hearing without filing a pleading, if no affirmative relief is sought, if there is full disclosure of the persons or entities in whose behalf the appearance is to be entered, if the interest of such persons or entities in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed.

A person or entity in whose behalf an appearance is entered in this manner becomes a party to and may participate in the proceeding to the degree indicated by the presiding officer.

(Cal. Code Regs., tit. 20, §54.)

Thus, in order to become a party to an application or investigation proceeding, [10] a person or entity only needs to show up at the hearing or prehearing conference and make a few simple disclosures. The proposed section would impose additional procedural hurdles (require the person or entity that wants to become a party to file a motion) and appears to allow the ALJ to deny party status where the current rule requires the ALJ to grant party status. (Compare Rule 54 with subsection (d) of

10 Most ratemaking and initial licensing hearings occur in application and investigation proceedings. These proceedings may also include other kinds of hearings.

§644.110.) Such additional impediments are not appropriate for proceedings such as ratemaking proceedings where the Commission's "primary task is to assimilate [a wide variety of public positions] into a composite 'public interest'". (Consumers Lobby, 25 Cal.3d at 909.)

Section 647.210(b): The language of this subsection should not prohibit agencies from adopting Alternative Dispute Resolution (ADR) techniques different than those authorized by §647.210, where agencies have the power to do so. This subsection authorizes an agency to make Article 2 "inapplicable" by issuing a regulation, but does not authorize an agency to modify the article by regulation. The subsection therefore might be read as not allowing an agency to adopt different ADR techniques, even though the agency has other authority to do so. Such a result is not appropriate for the PUC which "[s]ubject to statute and due process . . . may establish its own procedures." (California Constitution, art. XII, §2.)

Section 648.510: This section would authorize the PUC to adopt a different ex parte rule for "nonprosecutorial" proceedings. However, in light of the language of some other sections, e.g., §648.520(b)(2), it is unclear how much discretion the proposed new APA would actually give the PUC in drafting such a rule. In fact, the PUC has already adopted its own ex parte rule. See Cal. Code Regs., tit. 20, Art. 1.5. We submit that the PUC's own rule is better adapted to the unique functions of the PUC. Given the problems that might arise from attempting to comply with the more specific provisions of the proposed new APA, discussed below, we believe that the PUC should retain discretion to adopt its own ex parte rule.

Section 648.520: This section appears to prohibit, or at least require disclosure of, ex parte contacts whether or not they relate to a particular adjudicative proceeding. The same parties regularly appear in numerous PUC proceedings, both proceedings that would be treated as "adjudications" under the proposed new APA and those that would be defined as rulemakings. Moreover, the Commissioners regularly have contacts with utility and ratepayer representatives about numerous issues -- many of which may not be involved in any pending proceeding. There is no reason for a proposed statute dealing with "adjudications" to prohibit or require disclosure of contacts concerning issues that are not involved in a pending "adjudicative" proceeding. Compare the PUC's ex parte contact rule defining an "ex parte communication" as "a written or oral communication on any substantive issue in a covered proceeding, between a party and a decisionmaker, off the record and without opportunity for all parties to participate in the communication." (Cal. Code Regs., tit. 20, §1.1(g) (emphasis added).)

In subsection (a)(2), the reference to "an interested person outside an agency that is a party" is unclear. Communications between the presiding officer and a party are already covered by (a)(1).

At the PUC, the General Counsel is both the Commission's attorney and a supervisor of the attorneys who represent DRA and other staff advocates in Commission proceedings. The proposed new APA should not prohibit or require disclosure of communications between the General Counsel and the Commissioners or their advisors when the General Counsel is acting as the Commission's attorney. Compare the PUC's ex parte rule which exempts such communications from disclosure. (See Cal. Code Regs., tit. 20, §1.1(b)(2), (g), (h).)

When the Commission is concluding its work on a major rate case decision, it is sometimes necessary to contact utility personnel in order to ensure the accuracy of the final numbers for the decision. Under the proposed new APA, although the provisions are not entirely clear, it appears that such a communication might be required to be reported and an opportunity for comment provided. We submit that such notice and an opportunity to comment should not be required. As explained earlier, major rate cases are typically on a very tight time schedule and any such requirement could delay the case considerably, especially if other parties must be given 10 days in which just to "request" an opportunity to comment. (Compare §648.540(c).) Furthermore, any justification for notice and opportunity to comment is attenuated here. First, the contact is initiated by the Commission's staff to obtain specific advice that the Commission needs. In addition, there is no direct contact between the utility and the presiding officer or reviewing authority. Any advice that the utility gives is filtered through the expert CACD staff, who can detect and stop any improper lobbying.

Section 648.540: Subsection (a) apparently requires disclosure of the response of a presiding officer, or reviewing authority, to an ex parte contact. Subsection (b) further contemplates that the presiding officer or reviewing authority will review the disclosure for accuracy, when the disclosure is made by the party making the ex parte communication. In contrast, the PUC's ex parte rule specifically excludes from disclosure a description of the decisionmaker's communication. The PUC's rule also requires the party making the ex parte communication to make the disclosure, and does not require any review by the decisionmaker. (See Cal. Code Regs., tit. 20, §1.4(a).) The PUC rule excludes reporting of what the decisionmaker said, in large part, because of the likelihood that parties may mischaracterize the decisionmaker's statements, perhaps in self-serving ways. If PUC Commissioners have to review the disclosure, in order to avoid this problem, that will burden Commissioners and interfere with their ability to fulfill their numerous responsibilities. A side effect of this burden,

might well be to discourage the Commissioners from receiving permissible communications in ratemaking and similar proceedings. Given the legislative nature of such proceedings, we submit that the statute should not impose such a burden on communications with Commissioners. As stated above, we believe that the PUC should be authorized to craft its own ex parte rules.

Section 649.130 apparently would require issuance of a proposed decision even in cases in which the Legislature has determined that no proposed decision need be issued. See P.U. Code §311 and the implementing regulation, Cal. Code Regs., tit. 20, §77.1.

Section 649.150: This section would allow an ALJ's proposed decision to become a final decision without affirmative action by the Commission. As pointed out in the introduction to these comments, that is inappropriate because the Commission (and not its ALJs) has been given policymaking authority by the State Constitution and the Legislature. The Commission could prevent any ALJ decisions from becoming final by issuing a regulation requiring administrative review of every proposed ALJ Decision. Such an option, however, would introduce unnecessary procedures, at least in some cases. Consider the situation where an ALJ proposes to grant a motion for a summary judgment. Because no hearing has been held, no proposed decision is currently required. (See Cal. Code Regs., tit 20, §77.1.) Under current law the Commission is free to revise the ALJ's draft decision without providing for any additional argument. Nor would it appear that any additional argument is necessary, because the parties have already briefed the motion for summary judgment. In addition, any party who believes that the Commission's decision is legally erroneous can file for rehearing. (P.U. Code §§1731(b), 1732.) Nevertheless, under the proposed new APA, in order for the Commission to reserve the right to modify the ALJ's proposal, it apparently would have to afford the parties an opportunity for additional argument before issuing a final decision. (See §649.230(b).) This is another example of how existing statutes are more appropriate for the PUC than the proposed new APA, and is yet another reason why the PUC should be left out of the proposal.

Section 649.160: would extend the time for judicial review under certain circumstances. This could undermine the current statutory program for review of PUC decisions, which is designed to secure prompt review and finality for PUC decisions. Under current law, a party cannot apply for judicial review of a PUC decision unless it applies to the PUC for rehearing within 30 days after the PUC mails the decision. (See P.U. Code §1731(b).) A party must apply to the California Supreme Court for review within 30 days after the PUC acts on the application for rehearing. (See P.U. Code §1756; see also P.U. Code §1733 (situations under which a party can deem an application for

rehearing to have been denied).) Since a party must apply to the PUC for rehearing before seeking judicial review, it is unclear just how the PUC would comply with subsection (a), which apparently contemplates a right to seek judicial review without applying for rehearing. It is likewise unclear, how much additional time the party would have to apply for rehearing or judicial review if the PUC inadvertently failed to provide a required notice. In any event, however, it seems that this provision could introduce undesirable uncertainty into when a PUC decision has become final and is no longer subject to judicial review. It can be argued that allowing additional time for judicial review is desirable when the rights of a single individual and primarily private interests are being adjudicated. Such a provision seems inappropriate for PUC proceedings which often have multiple parties, and for decisions that can impact the rates paid by millions of consumers.

Section 649.170: The PUC often makes its decisions effective immediately. Nevertheless, a party is free to file a petition for modification requesting correction of a mistake or clerical error at any time thereafter, even if a party has filed an application for rehearing claiming legal error. In contrast, an application under proposed §649.170 cannot be made after the effective date of a decision, or after administrative review has been initiated. It does not appear that such restrictions should apply to the PUC.

Sections 649.230 & 649.240: As explained in the introductory portion of these comments, the PUC should remain free to determine to what ALJ it should assign a remand.

Sections 649.310 - 649.330: All current PUC decisions are available through the Lexis electronic service. (See P.U. Code §323.) Furthermore, the PUC has never limited the ability of parties to citing only specifically listed "precedent" decisions.^[11] A provision requiring the designation of "precedent" decisions may make sense for agencies that issue hundreds of nearly identical decisions (composed from stock paragraphs) that are not readily available. Such a provision makes no sense for the PUC where most decisions are individually crafted and potentially useful as precedent in future proceedings, and where all current decisions are available through an electronic research service to which many lawyers subscribe. The PUC does publish some selected decisions in hard

11 Public Utilities Code §1705 does provide that PUC decisions under the expedited complaint procedure (P.U. Code §1702.1) are not precedential.

copy. Those selected decisions are indexed by subject matter at the back of each volume. However, in order to allow parties the right to cite all potentially relevant cases as precedent, the proposed new APA would require that, starting in 1996, the Commission index all of its decisions. Given that the Commission's decisions are available on the Lexis service, there is no reason to require the PUC to incur this unnecessary expense.

Section 650.120: As mentioned above, the Commission often makes its decisions effective immediately. (See P.U. Code §1731(a) authorizing this practice.) The proposed section would appear to restrict the Commission's ability to grant a stay of a decision after the decision has become effective. In light of the PUC's continuing and general jurisdiction over utilities, and the fact that a party cannot apply for judicial review without first applying for rehearing (P.U. Code §1731(b), it makes no sense to prohibit the Commission from issuing a stay after a decision has become effective. Indeed, P.U. Code §1733(b) authorizes such a practice under certain circumstances (when an application for rehearing has been filed, the decision has become effective, and the PUC has not completed action on the application for rehearing within 60 days).

Concluding Comments: As shown above, many of the mandatory provisions of the proposed new APA are inappropriate for the PUC. It makes little sense to try to accommodate the PUC's unique functions and situation by giving the PUC additional authority to issue regulations which would allow it to modify or opt out of even more provisions of the proposed new APA. Little of the proposed new APA would actually apply to the PUC and the PUC would have to go through considerable unnecessary effort to promulgate regulations simply restating current law. The PUC's Legal Division submits that the wiser course of action is simply to recognize the uniqueness of the PUC by leaving it out of the proposed new APA.

Further considerations support this conclusion. In addition to those situations where the proposed new APA requires "adjudicative proceedings", the PUC also uses hearing-type procedures to set rates for (or otherwise regulate) a class of utilities. These proceedings are not subject to the proposed new APA, and the procedures contained in the proposed new APA are certainly not appropriate for such proceedings. Furthermore, the PUC conducts rulemakings without conducting evidentiary hearings. (See Cal. Code Regs., tit. 20, Art. 3.5.) Thus, subjecting the PUC to the proposed new APA would apparently require the PUC to have three different sets of procedural rules (i.e. one for "adjudicative proceedings", one for hearing-type procedures used in other situations, and one for rulemakings.) Furthermore, proceedings that the proposed new APA treats as "adjudications" are often consolidated with proceedings that would not be subject to the proposed new APA. Thus, there could

easily be confusion as to whether or how the proposed new APA would apply to a particular PUC hearing or PUC decision.[12] All of these factors argue for leaving the PUC out of the proposed new APA.

Specific Public Utilities Code Sections that Should Not Be Repealed

The PUC Legal Division submits that no provisions of the Public Utilities (P.U.) Code should be repealed, because the proposed new APA should not apply to the PUC. Even if the proposed new APA were to apply to the PUC, most of the existing statutory provisions would have to be retained (although they might have to be rewritten for clarity). As explained above, the PUC often conducts evidentiary-type hearings in proceedings that are not covered by the proposed new APA. For example, the PUC often conducts evidentiary hearings in cases that set rates for a whole class of utilities. Accordingly, the PUC would need to retain the current statutory provisions governing its hearing procedures to apply to hearings that would not be subject to the new APA.

In addition to these general reasons why P.U. Code sections should not be repealed, there are more specific reasons why individual P.U. Code sections should not be repealed. The following paragraphs list many of these sections and briefly explain the specific need for their retention.

P.U. Code §310: The PUC's longstanding practice is to assign one (or more) Commissioner(s) and an ALJ to each proceeding. This practice is authorized by P.U. Code §§310 & 311(b). The assigned ALJ typically acts as the presiding officer and is always present during the hearings. However, the assigned Commissioner may act as the presiding officer on occasion, and most importantly, may issue an assigned Commissioner's ruling. Such rulings typically dispose of important procedural points in a proceeding. Given the central role of policymaking in PUC "adjudications" (as discussed above), it is imperative that the

12 The definition of "decision" contained in the proposed new APA does not encompass all of the opinions and orders that the Commission issues. Nevertheless, in common parlance they are all decisions. If the PUC will have to restrict its use of the term to those opinions and orders that are "decisions" within the meaning of the APA (even if just in order to avoid confusion), then it will likely have to create new terminology and amend its existing statutes and regulations that cover matters that do not fall within the proposed new APA.

assigned Commissioner or Commissioners be able to determine the course of a proceeding by deciding matters such as which issues should be considered during the various phases of a proceeding. It is important that the assigned Commissioner have this authority, even though the assigned Commissioner typically is not present for most of the proceeding. Accordingly, section 310 should be retained, inter alia, so that the Commission can continue to assign a Commissioner to each proceeding, without any doubt as to the propriety of this practice pursuant to proposed §643.110. [13]

P.U. Code §311: In addition to the reasons discussed above, there are a number of other reasons why this statute should be retained. Subsection (d) makes it clear that only the Commission, and not an ALJ, can issue a final decision. (See the last two sentences of subsection (d).) Subsection (d) also establishes the framework under which the Commission receives comments on an ALJ's proposed decision. That subsection generally requires a 30 day period after the filing and service of a proposed decision before the Commission can issue its decision. Article 19 of the PUC's Rules of Practice and Procedure then establishes the comment procedure that occurs during that period. (Cal. Code Regs., tit. 20, art. 19.) Section 311 also implements the PUC's constitutional authority to issue subpoenas. (See Cal. Constitution, art. XII, §6; P.U. Code §311(a) & (b).)

P.U. Code §312: This section implements the PUC's constitutional authority to punish for contempt. (See Cal. Constitution, art. XII, §6.) In contrast, the proposed new APA would only authorize superior courts to punish a person for contempt before the agency. (See proposed §648.620.) Given the PUC's constitutional authority to punish for contempt, it should not be limited to the procedures provided by the proposed new APA.

P.U. Code §325: This section provides the Commission with some detailed guidelines for establishing expedited procedures to be followed when the President of the United States declares an emergency. This section deals with a more limited set of circumstances than is covered by §§641.310 - 641.380 of the proposed new APA (Emergency Decision). However, it is also not subject to all of the restrictions of those sections. It should

13 In addition, proposed §643.110 should be drafted so as not to prohibit the assigned Commissioner from functioning as described above.

be retained to allow the PUC to deal with the specific situations it covers as the Legislature thought appropriate.

P.U. Code §454(c): This subsection requires the PUC to permit utility customers, and organizations formed to represent their interests, to testify at certain hearings (subject to certain restrictions). Their right to testify should not be disturbed.

P.U. Code §705: This section provides the method for initiating particular proceedings before the PUC.

P.U. Code §728.5: This section further implements the PUC's constitutional authority to issue subpoenas and punish for contempt. (See Cal. Constitution, art. XII, §6.)

P.U. Code §§1006, 1034, 5379.5, & 7726: These sections provide cease and desist powers that extend to situations not covered by §§641.310 - 641.380 of the proposed new APA (Emergency Decision). The PUC should not be deprived of these powers. Indeed, the proposed new APA should make clear that powers granted by such other statutes are not subject to any additional restrictions contained in those APA sections. Furthermore, §7726(e) specifically authorizes delegation of the PUC's cease and desist power, a matter not specifically addressed by the emergency decision sections of the proposed new APA.

P.U. Code §§ 1033.7, 1070.5, 3774.5, 4022, 5285.6, 5378.5, & 5378.6: These statutes direct the PUC to summarily suspend or revoke the operating authority of motor carriers upon receipt of a written recommendation from the California Highway Patrol (CHP) where: (i) the carrier has consistently failed to abide by certain safety regulations; (ii) the carrier's operations present an imminent danger to public safety; or (iii) the carrier has failed to enroll all drivers in the pull notice system. (See, e.g., P.U. Code §1033.7(a).) While the situation described in (ii) would be covered by the emergency decision sections of the proposed new APA, the other two situations would appear not to be. (Compare proposed §641.320(b).) There is no reason to disturb the Legislature's decision that these other two situations also justify summary suspension.

Another reason for retaining these P.U. Code sections is that the emergency decision sections of the proposed new APA are designed to deal with the situation where a single agency both determines that emergency action should be taken and then takes action. Under these P.U. Code sections the CHP determines that there should be a summary suspension and the PUC then suspends the carrier's operating authority. (See, e.g., P.U. Code §1033.7(a).) The PUC does not exercise any discretion in

initially suspending the carrier's operating authority.[14] Therefore, it is the CHP which provides the motor carrier with notice and an informal opportunity to be heard before the PUC can act. (See, e.g., P.U. Code §1033.7(c)(3).) In contrast, §641.330(a) of the proposed new APA apparently would require the PUC to give the respondent notice and an opportunity to be heard before the PUC could take action. Similarly, under §641.340 of the proposed new APA, the agency is to issue an emergency decision explaining the basis for its action. However, given the respective roles of the PUC and the CHP, the P.U. Code sections direct the CHP to provide the motor carrier with the basis for the CHP's recommendation that the carrier's operating authority be suspended. (See, e.g., P.U. Code §1033.7(c).)

These P.U. Code sections provide different time periods and methods for obtaining further consideration of the underlying issues than would be provided under the emergency decision sections of the proposed new APA. (See, e.g., P.U. Code §§1033.7(b) & (d).) These provisions are tailored to the specific situations that these P.U. Code sections deal with. There is no reason to require additional procedures under §§641.350 and 641.370 of the proposed new APA. Indeed, it would be difficult for the PUC to meet the time period required by §641.370, since the Commission generally meets only once every two weeks.

P.U. Code §§1033.8(b) & (c); 1070.6(b) & (c); 3774.6(b) & (c); 5285.5(b) & (c); 5378.7(b) & (c): These statutes direct the PUC to summarily suspend or revoke the operating authority of a motor carrier when a carrier has failed to pay a final judgment to an employee pursuant to §3716.2 of the Labor Code. As with the CHP statutes discussed immediately above, there is no reason to disturb the Legislature's determination that summary action is justified in this situation, or that the procedures specifically tailored to this kind of suspension or revocation are adequate. Indeed, given the limited factual issues presented (see, e.g., the last sentence of §1033.8(c)), there seems little need here for the more complex emergency decision procedures contained in the proposed new APA.

P.U. Code §§1207 - 1213: These sections provide the particular procedures to be followed when the PUC establishes the just compensation to be paid when property is taken or damaged in a railroad grade separation project. Many of these procedures are unique to such proceedings. Indeed, P.U. Code §1210 provides

14 Accordingly, the authority to order these suspensions has been delegated to the Commission's staff. It is not clear that the authority to issue emergency decisions could be delegated under the proposed new APA.

for substitute service by means of publication, a method of service not authorized by the proposed new APA.

P.U. Code §§1403 - 1412: These sections provide the particular procedures to be followed when the PUC establishes the just compensation to be paid for utility property being acquired by a political subdivision. In many respects, these provisions are similar to those contained in P.U. Code §§1207 - 1213. Section 1407, like §1210, provides for substitute service by means of publication.

P.U. Code §1701: This section implements the PUC's constitutional authority to establish its own rules of practice and procedure. (See Cal. Constitution, art. XII, §2.) It also provides that "[n]o informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, [or] decision . . . made, approved, or confirmed by the commission."

P.U. Code §1702: This section specifies what complaints may be filed with the PUC. It further requires 25 signatures on certain kinds of complaints.

P.U. Code §1702.1: This section establishes an expedited complaint procedure, similar to small claims procedure, for certain complaints against utilities. A party may not be represented by an attorney, and the proceedings are not reported. The proposed new APA contains no analogous procedure.

P.U. Code §1703: This section specifies that no motion shall be entertained, and no court shall reverse a PUC decision, for misjoinder of causes of action or misjoinder or nonjoinder of parties. It also provides that the PUC shall not be required to dismiss a complaint because there is no direct damage to the complainant. The proposed new APA does not contain any such provisions.

P.U. Code §§1704, 1705, & 1706: These sections (as well as many others) apply both to proceedings that would be covered by the proposed new APA and to proceedings that would not. In addition, §1705 provides that decisions issued under the expedited complaint procedure are not precedential. Section 1706 also specifies the record on court review, a subject not covered by the current tentative recommendation.

P.U. Code §1707: This section specifies that a public utility may file a complaint on any grounds upon which complaints may be filed by other parties, and that such a complaint may be heard ex parte by the PUC.

P.U. Code §1708: This section permits the PUC to rescind, alter, or amend any order or decision made by it (so long as

notice and opportunity to be heard is provided as required in the case of complaints). This is an important provision that defines the extent of the PUC's authority. The proposed new APA contains no comparable provision.

P.U. Code §1731: Subsection (b) grants rights to certain non-parties to file for review (rehearing) of PUC decisions. It also contains provisions requiring exhaustion of administrative remedies within a specified time period as condition of a court challenge. The proposed new APA does not contain any similar provisions. In addition, subsection (a) clarifies that the PUC can make a decision effective before it mails the decision to the parties.

P.U. Code §1732: This section requires specificity in the application for rehearing and bars a court challenge based on any grounds not specifically set forth in the application for rehearing. The proposed new APA does not contain similar provisions. The requirement that a party apply for rehearing before petitioning for judicial review is most important in light of the fact that only the California Supreme Court has jurisdiction to review the PUC's decisions. (See P.U. Code §1759.) This exhaustion of remedies requirement ensures that the PUC has an opportunity to correct any legal errors in its decisions before judicial review, and thus helps to conserve limited judicial resources.

P.U. Code §§1733, 1734, & 1735: Section 1733 provides for certain automatic stays of PUC decisions. There is no similar provision in the proposed new APA. Both sections 1733 and 1735 authorize the PUC to issue stays. The PUC's authority to issue stays under these sections is not limited to the period before the decision becomes effective. Compare proposed §650.120. Sections 1733 and 1734 also permit a party to file a petition for review with the Supreme Court if the PUC does not act on its application for rehearing, or a rehearing, within specified time periods. The proposed new APA does not contain provisions on that subject.

P.U. Code §1736: This section specifies the powers the PUC may exercise when it issues a decision after rehearing. The proposed new APA contains no similar provision.

P.U. Code §1794: This section authorizes the taking of depositions. Unlike proposed §645.130(b)(4), it does not require a showing that the witness "will be unable or can not be compelled to attend the hearing."

P.U. Code §§ 1795, 3741, & 5258: Under these sections the PUC can order a person to give incriminating testimony, and in return the person receives immunity from prosecution. The proposed new APA contains no similar provisions.

P.U. Code §§ 1801 - 1812: These sections authorize compensation for advocate's fees and other costs incurred by public utility customers when participating or intervening in PUC proceedings. The proposed new APA contains no similar provisions.

P.U. Code §§1821 - 1824: These sections deal with the verification of computer models used as the basis for testimony in PUC proceedings. The proposed new APA does not cover this subject.

P.U. Code §§2707, 3731, 3739, 5251, & 5256: These sections apply procedures applicable under the Public Utilities Act (P.U. Code §§201 - 2119) to various other PUC proceedings. As explained above, the Public Utilities Act sections need to be retained; therefore these sections should be retained as well.

P.U. Code §3557(d): This section provides a procedure for summarily suspending the PUC operating authority of an "owner-operator" whose driver's license has been suspended or revoked. The owner-operator has an opportunity, before the PUC takes action, to show cause why his operating authority should not be suspended. Furthermore, the factual issues involved are likely to be simple. Accordingly, the more elaborate procedures required for emergency decisions under the proposed new APA (§§641.310 - 641.380) do not seem necessary here.

P.U. Code §5285(b): This section permits the PUC to suspend the permit of a household goods carrier without a hearing under circumstances not covered by §§641.310 - 641.380 of the proposed new APA (Emergency Decision).

As demonstrated above, numerous procedural provisions of the Public Utilities Code would have to be retained even if the PUC were made subject to the proposed new APA. Thus, rather than simplifying and clarifying the procedural rules applicable to PUC proceedings, subjecting the PUC to the proposed new APA would complicate, and make it more difficult to determine, the procedural rules applicable to PUC proceedings. The Legal Division of the PUC submits that that is one more reason why the PUC should be exempted from the proposed new APA.

Very truly yours,



Peter Arth, Jr.
General Counsel

PAJ:jtp:lkj:ltq

Exhibit

Statutes on Public Utilities Commission Hearings

Pub. Util. Code § 310. Quorum; taking of evidence

310. No vacancy in the commission impairs the right of the remaining commissioners to exercise all the powers of the commission. A majority of the commissioners constitutes a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. Any investigation, inquiry, or hearing which the commission may undertake or hold may be undertaken or held by or before any commissioner or commissioners designated for the purpose by the commission. The evidence in any investigation, inquiry, or hearing may be taken by the commissioner or commissioners to whom the investigation, inquiry, or hearing has been assigned or, in his, her, or their behalf, by an administrative law judge designated for that purpose. Every finding, opinion, and order made by the commissioner or commissioners so designated, pursuant to the investigation, inquiry, or hearing, when approved or confirmed by the commission and ordered filed in its office, is the finding, opinion, and order of the commission.

Pub. Util. Code § 311. Authority of commission, commissioner, and administrative law judge; conduct of proceedings

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts. The commission, upon scheduling hearings and specifying the scope of issues to be heard in any proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, shall assign an administrative law judge to preside over the hearings, either sitting alone or assisting the commissioner or commissioners who will hear the case.

(c) The evidence in any hearing shall be taken by the administrative law judge designated for that purpose. The administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) The administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

Pub. Util. Code § 312. Issuance and service of process

312. The commission and each commissioner may issue writs of summons, subpoenas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any commissioner, extends to all parts of the State and may be served by any person authorized to serve process of courts of record, or by any person designated by the commission or a commissioner. The person executing any such process shall receive such compensation as is allowed by the commission, not to exceed the fees prescribed by law on August 8, 1915, for similar services, and such fees shall be paid in the same manner as provided in this part for payment of the fees of witnesses.

Pub. Util. Code § 325. Legislative findings; expedited emergency procedures

325. (a) The Legislature hereby finds and declares that the commission should have the authority to act swiftly to expedite planning for the long-term recovery in parts of the state which have been declared national disaster areas and in which severe damage to or destruction of existing utility facilities has occurred and to adopt expedited procedures for that purpose.

(b) The commission shall, therefore, review existing rules, regulations, and orders and develop and adopt new rules, regulations, or orders, as may be appropriate or necessary to establish expedited procedures to be followed in the event that a determination is made by the President of the United States that an

emergency exists, of the severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance is necessary pursuant to Section 5191 of Title 42 of the United States Code Annotated. The procedures shall require a determination by the commission, upon application of a utility or other interested party, that the emergency has resulted in severe damage or destruction to an existing utility's facilities or existing utilities' facilities under the jurisdiction of the commission. The rules and regulations shall be developed consistent with existing rules and regulations pursuant to the authority granted to the commission in Sections 701 and 1701. The expedited procedures shall not prevent or otherwise interfere with a utility's ability promptly to restore service to its customers requiring the service, and to recover the reasonable costs associated with the restoration of service, as determined by the commission. The expedited procedures shall be adopted by the commission on or before January 1, 1994.

(c) In developing the expedited procedures, the commission shall consider, among other things, the following:

(1) Once the President declares that an emergency exists, the extent to which the expedited procedures should become effective.

(2) The extent to which the expedited procedures should take precedence over any conflicting rule, regulation, or order which may impede any appropriate or necessary decisions and actions by the commission. (3) If the expedited procedures become effective, the scope of relief which may be sought and granted pursuant thereto, including, but not limited to, the following:

(A) A determination of the applicability of existing commission rules, regulations, and orders.

(B) An exemption from those existing rules and regulations.

(4) The time period following the date of the declaration of an emergency by the President, within which any affected city or county within the declared disaster area or public utility serving all or a portion of the county or city thereof, may apply to the commission for relief.

(5) The need, if any, for referral of any application to an administrative law judge, and the need, if any, for formal evidentiary hearings.

(d) No utility shall be required to proceed to incur any costs pursuant to commission order issued under these expedited procedures until arrangements satisfactory to the affected utility have been made for payment of the excess, if any, of the estimated costs of completing the work contemplated by the commission order over the amount of the costs allocated to the ratepayers by the commission order.

(e) The expedited procedures shall preserve the right of interested parties to reasonable notice and an opportunity to be heard, as required by applicable law. The expedited procedures shall provide that in the event of an emergency as defined in this section, the commission has the authority to waive the referral of

the application to an administrative law judge, and has the authority to act on the application.

(f) In the event that the President has declared that an emergency exists, pursuant to federal law, after January 1, 1993, and before the adoption of emergency procedures by the commission, the commission is authorized, and empowered to act expeditiously upon the direct request of any affected city or county or public utility serving all or a portion of the city or county, for relief; and to adopt expedited measures and procedures which the commission determines to be necessary or appropriate, including, but not limited to, the considerations set forth above in subdivision (c).

Pub. Util. Code § 454. Rate increases; establishment of rules as to showing required to support proposed increases; testimony by customers

454. (a) Except as provided in Sections 454.1 and 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it, the corporation shall furnish to its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the commission in accordance with commission procedures for this means of submission. The procedures for advice letters may include provision for notice to customers or subscribers on a case-by-case basis, as determined by the commission. The corporation may include the notice with the regular bill for charges transmitted to the customers within 45 days if the corporation operates on a 30-day billing cycle, or within 75 days if the corporation operates on a 60-day billing cycle. If more than one application to change any rate is filed within a single billing cycle, the corporation may combine the notices into a single notice if the applications are separately identified. The notice shall state the amount of the proposed rate change expressed in both dollar and percentage terms for the entire rate change as well as for each customer classification, a brief statement of the reasons the change is required or sought, and the mailing address of the commission to which any customer inquiries may be directed regarding how to participate in, or receive further notices regarding the date, time, or place of, any hearing on the application, and the mailing address of the corporation to which any customer inquiries relative to the proposed rate change may be directed.

(b) The commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of

the showing, with or without a hearing, and the procedure to be followed in the consideration thereof. Rules applicable to common carriers may provide for the publication and filing of any proposed rate change together with a written showing in support thereof, giving notice of the filing and showing in support thereof to the public, granting an opportunity for protests thereto, and to the consideration of, and action on, the showing and any protests filed thereto by the commission, with or without hearing. However, the proposed rate change does not become effective until it has been approved by the commission.

(c) The commission shall permit individual public utility customers and subscribers affected by a proposed rate change, and organizations formed to represent their interests, to testify at any hearing on the proposed rate change, except that the presiding officer need not allow repetitive or irrelevant testimony and may conduct the hearing in an efficient manner.

Pub. Util. Code § 705. Hearing upon complaint or motion of commission

705. Whenever in Articles 2 (commencing with Section 726), 3 (commencing with Section 761), and 4 (commencing with Section 791) a hearing by the commission is required, the hearing may be had either upon complaint or upon motion of the commission.

Pub. Util. Code § 728.5. Transportation rates; powers and duties of commission

728.5. The commission may establish rates or charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates established by the commission than the rates, fares and charges which are specified in such tariff. The commission may examine books, records and papers of all railroad and other transportation companies; may hear and determine complaints against railroad and other transportation companies; and may issue subpoenas and all necessary process and send for persons and papers. The commission and each of the commissioners may administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record. The commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

Pub. Util. Code § 1006. When order to cease and desist from construction issuable

1006. When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission

makes and files its decision on the complaint or until the further order of the commission.

Pub. Util. Code § 1033.7. Suspension of certificate; reinspection; fee; recommendation of department; notice and hearing

1033.7. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate of a passenger stage corporation be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the corporation's certificate. The department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A corporation whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Public Utilities Commission Transportation Reimbursement Account. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a corporation's certificate suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the corporation's safety compliance has improved to the satisfaction of the department, unless the certificate is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the passenger stage corporation in writing of all of the following:

(1) That the department has determined that the corporation's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination. (2) That the determination may result in a suspension or revocation of the corporation's certificate by the commission.

(3) That the corporation may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the corporation, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate of any passenger stage corporation pursuant to subdivision (a), the commission shall furnish the corporation written notice of the suspension and shall hold a hearing within a

reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the corporation shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate. The commission may revoke the certificate of any passenger stage corporation suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the corporation has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a passenger stage corporation has continued to operate as such after its certificate has been suspended pursuant to subdivision (a), the commission shall do one of the following:

(1) Revoke the certificate of the corporation.

(2) Impose upon the holder of the certificate a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of unlawful operations.

Pub. Util. Code § 1033.8. Investigation; revocation of certificate; notice of right to hearing

1033.8. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the commission shall investigate to determine whether the passenger stage corporation has filed a false statement relative to workers' compensation insurance coverage, in violation of statute, or rules or orders of the commission. If, after notice and opportunity to be heard, the commission determines that there has been a violation of statute, or rules or orders of the commission, the commission shall impose appropriate penalties, which may include a fine and suspension of operating authority for a violation.

(b) Upon receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any passenger stage corporation as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall, 30 days from the date notice to the corporation is mailed, revoke the corporation's certificate of public convenience and necessity, unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the corporation requests a hearing pursuant to subdivision (c).

(c) Within seven days of receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any passenger stage corporation as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall furnish to the corporation named in the final judgment written notice of the right to a hearing regarding the complaint and the procedure to follow to request a hearing. The notice shall state

that the commission is required to revoke the corporation's certificate of public convenience and necessity to operate pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the corporation provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the commission has been so notified seven days prior to the conclusion of the 30-day waiting period. The notice shall also inform the corporation of a right to a hearing and the procedures to follow to request a hearing. The corporation may request a hearing within 10 days from the date the notice is sent by the commission. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the commission finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the commission shall immediately revoke the corporation's certificate of public convenience and necessity.

Pub. Util. Code § 1034. Authority of commission to order operator to cease and desist

1034. When a complaint has been filed with the commission alleging that any passenger stage is being operated without a certificate of public convenience and necessity, contrary to or in violation of the provisions of this part, the commission may, with or without notice, make its order requiring the corporation or person operating or managing such passenger stage, to cease and desist from such operation, until the commission makes and files its decision on the complaint, or until further order of the commission.

Pub. Util. Code § 1070.5. Suspension of certificate; recommendation of department; reinspection; fee; notice and hearing

1070.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate of a highway common carrier or cement carrier be suspended either: (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's certificate. The department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall

reinstate a carrier's certificate suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the certificate is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the highway common carrier or cement carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's certificate by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate of any highway common carrier or cement carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate. The commission may revoke the certificate of any highway common carrier or cement carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a highway common carrier or cement carrier has continued to operate as such a carrier after its certificate has been suspended pursuant to subdivision (a), the commission shall do one of the following:

(1) Revoke the certificate of the carrier.

(2) Impose upon the holder of the certificate a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of unlawful operations.

Pub. Util. Code § 1070.6. Investigation; revocation of certificate; notice of right to hearing

1070.6. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the commission shall

investigate to determine whether the highway common carrier or cement carrier has filed a false statement relative to workers' compensation insurance coverage, in violation of statute, or rules or orders of the commission. If, after notice and opportunity to be heard, the commission determines that there has been a violation of statute, or rules or orders of the commission, the commission shall impose appropriate penalties, which may include a fine and suspension of operating authority for a violation.

(b) Upon receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any highway common carrier or cement carrier as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall, 30 days from the date notice to the carrier is mailed, revoke the carrier's certificate of public convenience and necessity, unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the carrier requests a hearing pursuant to subdivision (c).

(c) Within seven days of receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any highway common carrier or cement carrier as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall furnish to the corporation named in the final judgment written notice of the right to a hearing regarding the complaint and the procedure to follow to request a hearing. The notice shall state that the commission is required to revoke the carrier's certificate of public convenience and necessity to operate pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the corporation provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the commission has been so notified seven days prior to the conclusion of the 30-day waiting period. The notice shall also inform the carrier of a right to a hearing and the procedures to follow to request a hearing. The carrier may request a hearing within 10 days from the date the notice is sent by the commission. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the commission finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the commission shall immediately revoke the carrier's certificate of public convenience and necessity.

Pub. Util. Code § 1207. Commencement of proceedings; contents of order and petition; verification; filing of copies

1207. Proceedings under Section 1206 may be commenced by order on the commission's own motion or by a petition filed by the State, county, city and county, city, political subdivision, railroad corporation, or street railroad corporation affected. Any such proceeding may be made a part of any proceeding commenced under Sections 1202 to 1205, inclusive.

The petition shall set forth the name and interest of the petitioner. The order on the commission's own motion and the petition shall set forth (a) a statement of the purpose of the proceedings and the use for which property or interest in or to property is sought to be taken, (b) a description of each piece of land or other property or interest in or to property sought to be taken, and whether it includes the whole or only a part of an entire parcel or tract or piece of property or interest in or to property, and (c) the names and addresses of all owners and claimants thereof, if known, or a statement that they are unknown, and a statement of each railroad corporation, the State and political subdivision which in the opinion of the commission or the petitioner has an interest in the proceeding.

The petition shall pray (a) that the commission fix the just compensation to be paid for the acquisition of or damage to the property and interest in or to property specified in the petition, (b) that the commission designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants of the property and interest in or to property condemned to whom such compensation shall be paid, and (c) that the commission make its final order of condemnation. When the proceeding is commenced by order on the commission's own motion such matters shall be included in the statement of the purpose of the proceeding.

The petition shall be verified. At the time it is filed with the commission the petitioner shall also file additional copies thereof equal in number to three more than the number of owners and claimants named in the petition.

Pub. Util. Code § 1208. Order to show cause; proceeding commenced on commission's own motion

1208. Upon the filing of the petition or the making of the order on the commission's own motion, the commission shall make its order to show cause. The order shall (a) specify the nature of the proceeding, (b) contain a general description of the property and interest to be condemned, and (c) direct the owners and claimants and the railroad corporations, street railroad corporations, and governmental authorities in interest named in the petition or order on the commission's own motion, who shall also be named in the order to show cause, to appear before the commission at a time and place specified in the order, to show cause, if any they have, why the commission should not proceed after hearing to fix the just compensation to be paid for the acquisition of or damage to the specified property and interest, to designate the party or parties to the proceeding who shall pay such compensation and the owners and claimants to whom such compensation shall be paid, and to make its final order of condemnation.

The order to show cause shall direct the secretary of the commission to serve or cause to be served upon each owner and claimant, railroad corporation, street railroad corporation, and governmental authority in interest a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition or order on the commission's own motion.

When the proceeding is commenced by order on the commission's own motion the order to show cause may be incorporated in the order on the commission's own motion.

Pub. Util. Code § 1209. Manner of personal service

1209. Personal service shall be made in accordance with the provisions of the Code of Civil Procedure or by depositing a copy of the order to show cause certified under seal of the commission with a copy of the petition or order on the commission's own motion attached thereto or made a part thereof in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to the party to be served.

Pub. Util. Code § 1210. Service by publication; registered mail; effect of personal service out of state

1210. If any owner or claimant named in the petition or order on the commission's own motion resides out of the State or has departed from the State or cannot after due diligence be found within the State, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, can be found within the State, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition or order on the commission's own motion that a cause of action exists against such owner or claimant on whom service is to be made and that he is a necessary or proper party to the proceeding, the commission may make an order that the service be made on such owner or claimant by publication of the commission's order to show cause. The order shall direct that the publication be made in a newspaper designated by the commission as likely to give notice to the owner or claimant to be served, and for such time as the commission finds to be reasonable, at least once a week, but publication against an owner or claimant residing out of the State or absent therefrom shall not be less than two months.

If the address of any owner or claimant as stated in the petition or order on the commission's own motion is out of the State, the secretary of the commission shall, within 15 days after the making and filing of the order to show cause, deposit or cause to be deposited a copy of that order, certified under the seal of the commission, with a copy of the petition or order on the commission's own motion attached thereto or made part thereof, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition or order on the commission's own motion. Personal service of a copy of the order to show cause and of the petition or order on the commission's own motion out of the State is equivalent to publication and deposit in the United States mail.

Pub. Util. Code § 1211. Time for serving notice of hearings; specifications; proof of service; jurisdiction; effect on jurisdiction of failure to serve owner or claimant not named in petition or order

1211. Within 10 days prior to the time set for the first hearing on the petition or order on the commission's own motion, which time shall be not less than 30 days after the filing of the petition or the making of that order, the secretary shall serve or cause to be served upon the petitioner a written notice, specifying the time and place of the hearing. In all respects not in this chapter otherwise provided, service and the proof of service shall be made as provided by the Code of Civil Procedure. Upon the completion of service upon the petitioner or upon any party in interest named in the petition or order, the commission shall have full and complete jurisdiction insofar as such petitioner or party in interest is concerned, to make each finding referred to in this chapter, to fix the just compensation to be paid for the acquisition of or damage to any property or interest therein specified in the petition or order, to designate the party or parties to the proceeding who shall pay such compensation and the owner or claimant to whom such compensation shall be paid, and to make its final order of condemnation. The failure to make service upon any person alleging that he is an owner or claimant or party in interest but not named in the petition or order or to acquire jurisdiction over such person shall in no way affect the jurisdiction of the commission over owners and claimants and parties in interest on whom service has been made.

Pub. Util. Code § 1212. Amending petition or order after filing

1212. The commission at any time subsequent to the filing of the petition, and prior to making and filing its finding of just compensation, may authorize the amendment of the petition, or in case the proceeding is by order on the commission's own motion may amend the order, by altering or modifying the description of the property or interest therein, or by adding to or deducting from the property or interest therein, or by bringing in any additional party or parties, or in any other respect including jurisdictional allegations.

Pub. Util. Code § 1213. Time and place of hearing; findings; time for fixing compensation

1213. At the time and place specified in the order to show cause, or at such other time and place as, for good cause, is otherwise ordered by the commission, the commission shall proceed to a hearing upon the petition or order on the commission's own motion. When the proceeding has been submitted the commission shall make and file its finding upon the question whether the use to which the property or interest therein is to be applied is a use authorized by law and whether the taking is necessary to such use, and shall make and file its written finding fixing the just compensation to be paid for the property or interest. If the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. The just compensation shall be fixed by the commission as of the day on which the petition was filed or the order on the commission's own motion was made.

Pub. Util. Code § 1403. Petition by political subdivision to acquire by eminent domain

1403. Any political subdivision may, at any time, file with the commission either a petition of the first class, setting forth the intention of the political subdivision to acquire under eminent domain proceedings, or otherwise, the lands, property, and rights of any character whatsoever of any public utility or a petition of the second class, setting forth the intention of the political subdivision to initiate such proceedings as may be required under the law governing the political subdivision for the purpose of submitting to the voters of the political subdivision a proposition to acquire under eminent domain proceedings, or otherwise, the lands, property, and rights of any character whatsoever of any public utility.

Pub. Util. Code § 1404. Contents of petition; signature and verification; filing of additional copies

1404. Each such petition shall contain the name of the political subdivision appearing as petitioner therein, a description of the lands, property, and rights which the political subdivision intends to acquire, and the names and addresses of all owners and claimants thereof, including each trustee and mortgagee under each deed of trust and mortgage, if known, or a statement that they are unknown. The petition shall pray that the commission fix the just compensation which shall be paid by the political subdivision, under the law, for such lands, property, and rights. The petition shall be signed in the name of the political subdivision and verified by the chairman or other presiding officer or by the secretary or clerk of the legislative or other governing body of the political subdivision. At the time the petition is filed, the petitioner shall also file with the commission additional copies thereof equivalent in number to three more than the number of owners and claimants named in the petition.

Pub. Util. Code § 1405. Commission's order to show cause; contents of order

1405. Upon the filing of the petition the commission shall make its order to show cause. The order shall specify the nature of the proceeding, contain a general description of the lands, property, and rights which petitioner desires to acquire by condemnation or otherwise, and direct the owners and claimants named in the petition, who shall also be named in the order, to appear before the commission at a time and place specified in the order, to show cause, if any they have, why the commission should not proceed to hear the petition and to fix the just compensation to be paid for the lands, property, and rights.

The order shall direct the executive director of the commission to serve or cause to be served upon each owner and claimant a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition.

Pub. Util. Code § 1405.1. Procedure for water corporations and water companies

1405.1. With respect to water corporations and water companies, the following procedures shall apply:

(a) Upon the filing of the petition, the commission shall make its order to show cause. The order shall specify the nature of the proceeding, contain a general description of the lands, property, and rights which petitioner desires to acquire by condemnation or otherwise, and direct the owners and claimants named in the petition, who shall also be named in the order, to appear before the commission at a time and place specified in the order and to show cause, if any they have, why the commission should not proceed to hear the petition and to fix the just compensation to be paid for the lands, property, and rights.

The order shall direct the executive director of the commission to serve or cause to be served upon each owner and claimant a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition.

(b) In response to the order to show cause, in response to a petition of the first class, as specified in Section 1403, the respondent public utility, or the owners of more than one-half interest in the public utility, may present the commission with a certified copy of a filed motion to the superior court where the utility property is located to take jurisdiction of the matter. When presented the motion before, or at the time of, the hearing on the order to show cause, the commission shall dismiss the proceeding. The superior court shall then grant the motion to take jurisdiction of the matter. The political subdivision may then file, within 60 days of the court's granting the motion, an action in eminent domain pursuant to the Code of Civil Procedure and any further proceedings shall be conducted pursuant to those provisions.

(c) All proceedings held pursuant to either subdivision (b) or (d) shall be given priority over all civil cases in accordance with Section 1260.010 of the Code of Civil Procedure.

(d) In response to an order to show cause in response to a petition of the second class, as specified in Section 1403, and upon presentation of the motion specified in subdivision (b), the commission shall suspend the proceeding, but shall not dismiss the proceeding. The superior court shall then grant the motion to take limited jurisdiction of the matter solely for the purpose of determining the amount of just compensation. The political subdivision may then file, within 30 days, an action in the nature of eminent domain, solely for the purpose of determining, pursuant to the Evidence Code and the Code of Civil Procedure, the just compensation to be paid for the land, property, and rights. Upon a determination of just compensation, the court shall certify the finding to the commission. The finding shall not be appealable, and the court shall be acting as an agent of the commission in making the finding. The finding shall be binding on the commission as if it had been made by the commission itself pursuant to Section 1411.

The commission shall then continue the matter pursuant to this chapter.

(e) If the respondent public utility, or the owners of more than one-half interest in the public utility, in the case of a petition of either the first or second class, files a motion to remove the matter from the commission to superior court pursuant to

this section, the commission and the court shall not make an award of any litigation expenses incurred prior to the commission's dismissal or suspension of the matter.

(f) Notwithstanding any other provision of law, the date of valuation for purposes of just compensation shall be fixed by the superior court as of the day on which the court grants the motion filed by the public utility pursuant to subdivision (b) or (d).

(g) A political subdivision is liable only as provided in Sections 1414 and 1415 for payment of the reasonable expenditures of the owner in any proceeding initiated pursuant to subdivision (d). For purposes of this subdivision, the proceeding before the commission, as used in Section 1415, includes any proceedings conducted pursuant to subdivision (d).

(h) The amendments made to this section by Assembly Bill 616 during the 1987 portion of the 1987-88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988.

Pub. Util. Code § 1406. Manner of service of order to show cause

1406. Service of the order to show cause shall be made in accordance with the provisions of the Code of Civil Procedure or by depositing a copy of the order to show cause certified under the seal of the commission with a copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to each of the owners or claimants, at the address specified in the petition.

Pub. Util. Code § 1407. Service where owner or claimant out of state

1407. If any owner or claimant named in the petition resides out of the State or has departed from the State or cannot after due diligence be found within the State, or conceals himself to avoid service, or is a corporation having no managing or business agent, cashier or secretary or other officer upon whom summons may be served, who, after due diligence, can be found within the State, and the fact appears by affidavit to the satisfaction of the commission, and it also appears by such affidavit or by the petition that a cause of action exists against the owner or claimant on whom the service is to be made or that he is a necessary or proper party to the proceeding, the commission shall make an order that the service be made on such owner or claimant by publication of the commission's order to show cause. The order shall direct that the publication be made in a newspaper designated by the commission as likely to give notice to the person to be served, and for such time as the commission finds to be reasonable, at least once a week, but publication against an owner or claimant residing out of the State or absent therefrom shall not be less than two months. If the address of any owner or claimant, as stated in the petition, is out of the State, the secretary of the commission shall, within 15 days after the making and filing of the order to show cause, deposit or cause to be deposited a copy of that order, certified under the seal

of the commission, with a copy of the petition attached thereto, in the United States mail, enclosed in a sealed envelope, registered, with postage prepaid, addressed to such owner or claimant at the address specified in the petition. When publication is ordered, personal service of a copy of the order to show cause and of the petition out of the State is equivalent to publication and deposit in the United States mail.

Pub. Util. Code § 1408. Service of notice of hearing on petitioner; jurisdiction

1408. Within 10 days prior to the time set for the first hearing on the petition, which time shall be not less than 30 days after the filing of the petition, the executive director of the commission shall serve or cause to be served upon the petitioner a written notice specifying the time and place of the hearing. In all respects not in this chapter otherwise specified, service and the proof of service shall be made as provided by the Code of Civil Procedure. Upon the completion of service upon the petitioner or upon any owner or claimant named in the petition, the commission shall have full and complete jurisdiction over such petitioner, owner, or claimant, with full and complete jurisdiction, insofar as such petitioner, owner, or claimant is concerned, to make each finding referred to in this chapter. The failure to make service upon any person alleging that he is an owner or claimant but not named in the petition shall in no way affect the jurisdiction of the commission over owners and claimants on whom service has been made.

Pub. Util. Code § 1409. Time and place of hearing; payment of extra costs; presentation of evidence

1409. At the time and place specified in the order to show cause, or at such other time and place as, for good cause, is otherwise ordered by the commission, the commission shall proceed to a hearing on the petition. At such times and in such amounts as is directed by the commission, the political subdivision shall pay to the commission all extra costs as determined by the commission, which the commission incurs to comply with the requirements of this chapter, and if such amounts are not paid by the political subdivision as directed by the commission, the commission may suspend further proceedings on the petition. Evidence may be presented by the political subdivision, by each owner or claimant named in the petition, and by the commission.

Pub. Util. Code § 1410. Amending petition

1410. The commission may, at any time subsequent to the filing of the petition, and prior to making and filing its finding as to just compensation, authorize the amendment of the petition by altering or modifying the description of the lands, property, and rights, or by adding to or deducting from the lands, property, and rights, and in each other respect including jurisdictional allegations.

Pub. Util. Code § 1411. Findings required; day of fixing of compensation

1411. When the proceeding has been submitted, the commission shall make and file its written finding fixing, in a single sum, the just compensation to be paid by the political subdivision for the lands, property, and rights. If the commission finds that severance damages should be paid, the just compensation for such damages shall be found and stated separately. The just compensation shall be fixed by the commission as of the day on which the petition was filed with the commission.

Pub. Util. Code § 1412. Filing of acceptance by owner; payment; execution of deed

1412. Within 20 days after the commission has made and filed its finding, the owner of the lands, property, and rights may file with the legislative or other governing body of the political subdivision a written stipulation consenting and agreeing to accept the just compensation fixed by the commission. Upon the filing of the stipulation, the political subdivision shall proceed with all due diligence to provide the necessary funds under the law governing the providing of such funds, for paying the just compensation fixed by the commission. Whenever the just compensation has been tendered by the political subdivision, a deed of grant, bargain, and sale conveying the owner's right, title, and interest in and to the lands, property, and rights to the political subdivision shall be executed and delivered by the owner, and the other claimants who have any right, title, or interest in the property shall execute appropriate instruments conveying or releasing to the political subdivision their respective rights, titles, and interests therein. If the deed or the instruments of conveyance or release are not executed and delivered within 60 days after such tender has been made, the political subdivision may commence an action in a court of competent jurisdiction or proceed under Section 1413.

Pub. Util. Code § 1701. Rules of procedure

1701. All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

Pub. Util. Code § 1702. Filing of complaint

1702. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be

entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.

Pub. Util. Code § 1702.1. Complaint against public utilities for small claims; procedure

1702.1. (a) The commission shall entertain complaints against any electrical, gas, water, heat, or telephone company under Sections 734, 735, and 736 when the amount of money claimed does not exceed the jurisdictional limit of the small claims court as set forth in subdivision (a) of Section 116.2 of the Code of Civil Procedure. However, when the public interest so requires, the commission or presiding officer may, at any time prior to the filing of a decision, terminate the expedited complaint procedure and recalendar the matter for hearing under the commission's regular procedure.

(b) No attorney at law shall represent any party other than himself or herself under the expedited complaint procedure.

(c) No pleading other than the complaint and answer is necessary. A hearing without a reporter shall be held within 30 days after the answer is filed.

(d) The parties may file applications for rehearing pursuant to Section 1731. If the commission grants an application for rehearing, the rehearing shall be conducted under the commission's regular hearing procedure.

Pub. Util. Code § 1703. Joinder of causes and parties

1703. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

Pub. Util. Code § 1704. Notice and hearing

1704. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than 10 days before the time set for such

hearing, unless the commission finds that public necessity requires that such hearing be held at an earlier date.

Pub. Util. Code § 1705. Decision not precedent

1705. At the time fixed for any hearing before the commission or a commissioner, or the time to which the hearing has been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. Except for decisions filed after hearings held under Section 1702.1, the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or his or its attorney. The order shall, of its own force, take effect and become operative 20 days after the service thereof except as otherwise provided by the commission, and shall continue in force either for a period designated in it or until changed or abrogated by the commission. If the commission believes that an order cannot be complied with within 20 days, it may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order. Decisions rendered in response to complaints filed and processed pursuant to Section 1702.1 shall not be considered as precedent or binding on the commission or the courts of this state.

Pub. Util. Code § 1706. Record of proceedings

1706. A complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission, but if the petitioner and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the Supreme Court for its judgment, such stipulation and the questions and the evidence therein specified shall constitute the record on review. The provisions of this section shall not apply to hearings held pursuant to Section 1702.1.

Pub. Util. Code § 1707. Right of utility to complain; procedure

1707. Any public utility may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall

be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission.

Pub. Util. Code § 1708 . Modification of orders or decisions by commission

1708. The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Pub. Util. Code § 1709. Final orders as conclusive

1709. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

Pub. Util. Code § 1710. Documents and records as evidence

1710. No documents or records of a public utility or person or corporation which purport to be statements of fact shall be admitted into evidence or shall serve as any basis for the testimony of any witness, unless the documents or records have been certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct. If the person preparing them is dead or has been declared incompetent, any other person having knowledge of such statements of fact may certify the records. If certification pursuant to this section is not possible for any reason, the documents or records shall not be admitted into evidence unless admissible under the Evidence Code.

This section shall not apply to any documents not prepared, directly or indirectly, by, or under the supervision or direction of, the public utility or person or corporation offering the documents into evidence.

Pub. Util. Code § 1731. Effective date; application for rehearing

1731. (a) The commission shall set an effective date when issuing an order or decision. The commission may set the effective date of an order or decision prior to the date of issuance of the order or decision.

(b) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed an application to the commission for a rehearing within 30 days after the date of issuance or within 10 days after the date of issuance in the case of an order issued

pursuant to Article 5 (commencing with Section 816) and Article 6 (commencing with Section 851) of Chapter 4 relating to security transactions and the transfer or encumbrance of utility property. For purposes of this article, "date of issuance" means the date when the commission mails the order or decision to the parties to the action or proceeding.

Pub. Util. Code § 1732. Contents of application

1732. The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application.

Pub. Util. Code § 1733. Period for order for rehearing; denial of application

1733. (a) Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied; but, absent further order of the commission, the order shall not stand so suspended for more than 60 days after the date of filing of the application, at which time the suspension shall lapse, the order shall become effective, and the application may be taken by the party making it to be denied.

(b) Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought, and not granted within 60 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application.

Pub. Util. Code § 1734. Procedure when rehearing granted without suspension of order; affirmation of order if no determination

1734. If any application for a rehearing is granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all dispatch and shall determine the matter within 20 days after final submission. If no determination is made within that time, it may be taken by any party to the rehearing that the order involved is affirmed.

Pub. Util. Code § 1735. Compliance with order or decision while application is pending

1735. An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

Pub. Util. Code § 1736. Modification of order; effect

1736. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion

that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

Pub. Util. Code § 1794. Depositions

1794. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

Pub. Util. Code § 1795. Privilege against self-incrimination denied; prosecution concerning testimony forbidden

1795. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which, under oath, he has testified or produced documentary evidence, but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

Pub. Util. Code § 1801. Purpose of article

1801. The purpose of this article is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.

Pub. Util. Code § 1801.3. Legislative intent

1801.3. It is the intent of the Legislature that:

(a) The provisions of this article shall apply to all formal proceedings of the commission involving electric, gas, water, and telephone utilities.

(b) The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

(c) The process for finding eligibility for intervenor compensation be streamlined, by simplifying the preliminary showing by an intervenor of issues, budget, and costs.

(d) Intervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions.

(e) Intervenor compensation be awarded to eligible intervenors in a timely manner, within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.

(f) This article shall be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.

Pub. Util. Code § 1802. Definitions

1802. (a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) "Customer" means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or

that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Pub. Util. Code § 1802.5. Customer's eligibility for compensation

1802.5. Participation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision, consistent with Section 1801.3.

Pub. Util. Code § 1803. Prerequisites for award of reasonable fees and costs

1803. The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:

(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.

(b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

Pub. Util. Code § 1804. Request for finding of eligibility for compensation; contents; award procedure

1804. (a) (1) A customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In cases where no prehearing conference is scheduled or where the commission anticipates that the proceeding will take less than 30 days, the commission may determine the procedure to be used in filing these requests. In cases where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above, or where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent.

(2)(A) The notice of intent to claim compensation shall include both of the following:

(i) A statement of the nature and extent of the customer's planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed.

(ii) An itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time.

(B) The notice of intent may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subdivision (c).

(C) Within 15 days after service of the notice of intent to claim compensation, the administrative law judge may direct the staff, and may permit any other interested party, to file a statement responding to the notice.

(b) (1) If the customer's showing of significant financial hardship was included in the notice filed pursuant to subdivision (a), the administrative law judge, in consultation with the assigned commissioner, shall issue within 30 days thereafter a preliminary ruling addressing whether the customer will be eligible for an award of compensation. The ruling shall address whether a showing of significant financial hardship has been made. A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

(2) The administrative law judge may, in any event, issue a ruling addressing issues raised by the notice of intent to claim compensation. The ruling may point out similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and any other matter that may affect the customer's ultimate claim for compensation. Failure of the ruling to point out similar positions or potential duplication or any other potential impact on the ultimate claim for compensation shall not imply approval of any claim for compensation. A finding of significant financial hardship in no way ensures compensation. Similarly, the failure of the customer to identify a specific issue in the notice of intent or to precisely estimate potential compensation shall not preclude an award of reasonable compensation if a substantial contribution is made.

(c) Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who has been found, pursuant to subdivision (b), to be eligible for an award of compensation may file within 60 days a request for an award. The request shall include at a minimum a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. Within 30 days after service of the request, the commission staff may file, and any other party may file, a response to the request.

(d) The commission may audit the records and books of the customer to the extent necessary to verify the basis for the award. The commission shall preserve the confidentiality of the customer's records in making its audit. Within 20 days after completion of the audit, if any, the commission shall direct that an audit

report shall be prepared and filed. Any other party may file a response to the audit report within 20 days thereafter.

(e) Within 75 days after the filing of a request for compensation pursuant to subdivision (c), or within 50 days after the filing of an audit report, whichever occurs later, the commission shall issue a decision that determines whether or not the customer has made a substantial contribution to the final order or decision in the hearing or proceeding. If the commission finds that the customer requesting compensation has made a substantial contribution, the commission shall describe this substantial contribution and shall determine the amount of compensation to be paid pursuant to Section 1806.

Pub. Util. Code § 1806. Computation of award

1806. The computation of compensation awarded pursuant to Section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the comparable market rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services.

Pub. Util. Code § 1807. Time for payment of award; recovery of award through rate adjustment

1807. Any award made under this article shall be paid by the public utility which is the subject of the hearing, investigation, or proceeding, as determined by the commission, within 30 days. Notwithstanding any other provision of law, any award paid by a public utility pursuant to this article shall be allowed by the commission as an expense for the purpose of establishing rates of the public utility by way of a dollar-for-dollar adjustment to rates imposed by the commission immediately on the determination of the amount of the award, so that the amount of the award shall be fully recovered within one year from the date of the award.

Pub. Util. Code § 1808. Denial of award

1808. The commission shall deny any award to any customer who attempts to, delay or obstruct the orderly and timely fulfillment of the commission's responsibilities.

Pub. Util. Code § 1812. Large agricultural customers in group representing small customers

1812. A group or association that represents the interests of small agricultural customers in a proceeding and that would otherwise be eligible for an award of compensation pursuant to Section 1804 without the presence of large agricultural customers, as determined by the commission, shall not be deemed ineligible solely because that group or organization also has members who are large agricultural customers.

Pub. Util. Code § 1821. Definitions

1821. As used in this article, the following definitions apply:

- (a) "Computer model" means a computer program.
- (b) "Operations model" means a computer model that replicates, lists, describes, or forecasts a public utility's internal functions, including, but not limited to, its accounting procedures, cash management procedures, personnel assignments and procedures, and inventory control.
- (c) "Planning model" means a computer model that replicates, lists, describes, or forecasts a public utility's complex functions, including, but not limited to, the forecasting of future loads and resources, calculating costs of electricity generation, producing financial statements, and calculating costs of natural gas production or supply.
- (d) "Public utility" includes every public utility and every business which is a commission regulated subsidiary or commission regulated affiliate of a public utility. "Public utility" does not include a common carrier or a telephone corporation whose service is determined to be competitive by the commission.
- (e) "Verify" means to assess the extent to which the computer model mimics reality.

Pub. Util. Code § 1822. Verification; testimony; rules and procedures; access to programs and models of other parties

1822. (a) Any computer model that is the basis for any testimony or exhibit in a hearing or proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence, except that verification is not required for any electricity demand model or forecast prepared by the State Energy Resources Conservation and Development Commission pursuant to Section 25309 or 25402.1 of the Public Resources Code and approved and adopted after a hearing during which testimony was offered subject to cross-examination. The commission shall afford each of these electricity demand models or forecasts the evidentiary weight it determines appropriate. Nothing in this subdivision requires the State Energy Resources Conservation and Development Commission to approve or adopt any electricity demand model or forecast.

(b) Any testimony presented in a hearing or proceeding before the commission that is based in whole, or in part, on a computer model shall include a listing of all the equations and assumptions built into the model.

(c) Any data base that is used for any testimony or exhibit in a hearing or proceeding before the commission shall be reasonably accessible to the commission staff and parties to the hearing or proceeding to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence, as applied in commission proceedings.

(d) The commission shall adopt rules and procedures to meet the requirements specified in subdivisions (a), (b), and (c). These rules shall include procedural safeguards that protect data bases and models not owned by the public utility.

(e) The commission shall establish appropriate procedures for determining the appropriate level of compensation for a party's access.

(f) Each party shall have access to the computer programs and models of each other party to the extent provided by Section 1822. The commission shall not require a utility to provide a remote terminal or other direct physical link to the computer systems of a utility to a third party.

(g) The commission shall verify, validate, and review the computer models of any electric corporation that are used for the purpose of planning, operating, constructing, or maintaining the corporation's electricity transmission system, and that are the basis for testimony and exhibits in hearings and proceedings before the commission.

(h) The transmission computer models shall be available to, and subject to verification by, each party to a commission proceeding in accordance with subdivision (a) of Section 1822, and regulations adopted pursuant to subdivision (d) of Section 1822.

Pub. Util. Code § 1823. Duty of commission to review and monitor; output of operations model as evidence

1823. The commission shall periodically review and monitor the development and use of any operations model used by any public utility. The commission or any party may use the output of these operations models as evidence in a proceeding or hearing, without introducing into evidence the full methodology used to generate this output, if the commission has monitored that operations model continuously for at least 12 months before the hearing or proceeding and has reviewed and verified the operations model for accuracy no more than three months before the hearing or proceeding. However, no party shall be prohibited from reasonably cross-examining any witness who introduces this evidence.

Pub. Util. Code § 1824. Studies; report to Legislature

1824. The commission shall conduct studies to verify, validate, and improve the production cost planning models and the financial planning models of public utilities to facilitate their use by the commission. The commission shall complete the studies of the respective models used and report the results thereof to the Legislature on or before January 1, 1987.

Pub. Util. Code § 2707. Hearings to determine status; finality of findings and conclusions

2707. For the purpose of determining the status of any person, firm, or corporation, their lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating, or managing any water system or water supply within this state, the commission may hold hearings and issue process and orders in the manner and to the same extent as provided in Part 1 (commencing with

Section 201), and the findings and conclusions of the commission on questions of fact arising under this chapter are final and not subject to review, except as provided in Part 1 (commencing with Section 201).

Pub. Util. Code § 3557. Owner-operators classification of carriers

3557. (a) The commission shall establish a classification of highway carriers known as owner-operators.

(b) As used in this section, and in Sections 1808.3 and 34501.12 of the Vehicle Code, an owner-operator is a person who meets all of the following: (1) Holds a class 1, class 2, class A, or class B driver's license.

(2) Owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles.

(3) Holds highway carrier operating authority from the commission under Part 1 (commencing with Section 201) of Division 1, or Chapter 1 (commencing with Section 3501) or Chapter 7 (commencing with Section 5101).

(c) As used in this section, "heavy power unit" is a motor vehicle described in subdivision (a), (b), or (g) of Section 34500 of the Vehicle Code and "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), or (g) of that section.

(d) On and after January 1, 1990, the commission shall forward, at least annually, an updated list of owner-operators, along with their driver's license numbers, to the Department of Motor Vehicles. The commission, upon notification by the Department of Motor Vehicles that an owner-operator's driving privilege is suspended or revoked, shall suspend the carrier's operating authority, unless the carrier within 15 days shows good cause as to why the operating authority should not be suspended.

(e) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

Pub. Util. Code § 3731. Rules governing proceedings generally

3731. Except as otherwise expressly provided, in all respects in which the commission has power and authority under the Constitution of this State or this chapter, applications and complaints may be made and filed with the commission, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the Supreme Court of this State, considered and disposed of by the Supreme Court, in regard to the matters provided for in this chapter, in the same manner, under the same conditions and subject to the same limitations, and with the same effect specified in Part 1 of Division 1, so far as applicable.

Pub. Util. Code § 3739. Petition for rehearing after interim order

3739. After the making of an interim, interlocutory, or other order, any party to the proceeding or any stockholder or bondholder or other party pecuniarily

interested in the highway carrier affected may file a petition for rehearing, within the time and for the reasons provided in Sections 1731 to 1736, inclusive. The commission may act upon the petition within the time and in the manner provided in Sections 1731 to 1736, inclusive.

Pub. Util. Code § 3741. Privilege against self-incrimination denied; prosecution based on testimony forbidden; liability of witness for perjury

3741. No person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner or examiner, or in obedience to the subpoena of the commission, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this chapter, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which, under oath, he has testified or produced documentary evidence before the commission, or in obedience to its subpoena, or in any such cause or proceeding. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

Pub. Util. Code § 3774.5. Suspension of permit; reinspection; recommendation of department; notice and hearing

3774.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the permit of a highway permit carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a carrier's permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety

compliance has improved to the satisfaction of the department, unless the permit is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the highway permit carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the permit of any highway permit carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this chapter, terminate the suspension, continue the suspension in effect, or revoke the permit. The commission may revoke the certificate of any highway permit carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a highway permit carrier has continued to operate as such a carrier after its permit or permits have been suspended pursuant to subdivision (a), the commission shall do one of the following:

(1) Revoke the operating permit or permits of the carrier.

(2) Impose upon the holder of the permit or permits a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of unlawful operations.

Pub. Util. Code § 3774.6. Investigation; revocation of permit; notice of right to hearing

3774.6. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the commission shall investigate to determine whether the highway permit carrier has filed a false statement relative to workers' compensation insurance coverage, in violation of statute, or rules or orders of the commission. If, after notice and opportunity to be

heard, the commission determines that there has been a violation of statute, or rules or orders of the commission, the commission shall impose appropriate penalties, which may include a fine and suspension of operating authority for a violation.

(b) Upon receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any highway permit carrier as a result of an award having been made to an employee pursuant to Section 3616.2 of the Labor Code, the commission shall, 30 days from the date the carrier is mailed the notice, revoke the carrier's permit unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the carrier requests a hearing pursuant to subdivision (c).

(c) Within seven days of receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any highway permit carrier as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall furnish to the carrier named in the final judgment written notice of the right to a hearing regarding the complaint and the procedure to follow to request a hearing. The notice shall state that the commission is required to revoke the carrier's permit to operate pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the carrier provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the commission has been so notified seven days prior to the conclusion of the 30-day waiting period. The notice shall also inform the carrier of a right to a hearing and the procedures to follow to request a hearing. The carrier may request a hearing within 10 days from the date the notice is sent by the commission. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the commission finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the commission shall immediately revoke the carrier's permit.

Pub. Util. Code § 4022. Suspension of carrier's registration

4022. (a) Upon receipt of a written recommendation from the department that the registration of a private carrier be suspended for failure to either (1) maintain any vehicle of the carrier in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's registration. The department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A private carrier whose registration is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department by

submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected from carriers of property pursuant to this section in the Transportation Rate Fund. The fees required to be paid by carriers of passengers pursuant to this section shall be deposited in the Public Utilities Commission Transportation Reimbursement Account in the General Fund. Upon payment of the fee, the commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a carrier's registration suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the registration is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the department shall notify the private carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's registration by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the registration of any private carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the department. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may terminate the suspension, continue the suspension in effect, or revoke the registration. The commission may revoke the registration of any carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

Pub. Util. Code § 5251. Rules governing procedural matters

5251. Except as otherwise expressly provided, in all respects in which the commission has power and authority under the Constitution of this State or this chapter, applications and complaints may be made and filed with the commission, process issued, hearings held, opinions, orders, and decisions made and filed,

petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the Supreme Court of this State, considered and disposed of by the Supreme Court, in regard to the matters provided for in this chapter, in the same manner, under the same conditions and subject to the same limitations, and with the same effect specified in the Public Utilities Act, so far as applicable.

Pub. Util. Code § 5256. Rehearing

5256. After the making of an interim, interlocutory, or other order, any party to the proceeding or any stockholder or bondholder or other party pecuniarily interested in the household goods carrier affected may file a petition for rehearing, within the time and for the reasons provided in Sections 1731 to 1736, inclusive, and the commission may act upon the petition within the time and in the manner provided therein.

Pub. Util. Code § 5258. Privilege against self-incrimination; exemption from prosecution for perjury

5258. No person shall be excused from attending and testifying or from producing any book, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner or examiner, or in obedience to the subpoena of the commission, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this chapter, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which, under oath, he has testified or produced documentary evidence before the commission, or in obedience to its subpoena, or in any such cause or proceeding. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

Pub. Util. Code § 5285. Suspension, amendment, revocation, cancellation of permit; alternative imposition of fines

5285. (a) The permit of any household goods carrier may be suspended after notice and an opportunity to be heard if the carrier knowingly and willfully files a false report which understates revenues and fees.

(b) The permit of any household goods carrier may, upon application of the holder thereof, be amended or revoked, in whole or in part, or may, upon complaint or on the commission's own initiative, after notice and opportunity to be heard, be suspended, changed, or revoked, in whole or in part, for failure to comply with any provision of this chapter or with any order, rule, or regulation of the commission or with any term, condition, or limitation of the permit. A household goods carrier which requests a hearing within 30 days after receiving the notice and opportunity to be heard shall be granted a hearing. The right to

operate under any household goods carrier permit may be suspended by the commission, upon reasonable notice of not less than 15 days to the holder without hearing or other proceedings, for failure to comply, and until compliance, with Section 5161 or with any order, rule, or regulation of the commission.

(c) As an alternative to the cancellation, revocation, or suspension of an operating permit or permits, the commission may impose upon the holder of the permit or permits a fine of not more than twenty thousand dollars (\$20,000). All fines collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund.

(d) The commission may cancel, suspend, or revoke the permit of any carrier upon the conviction of the carrier of any misdemeanor under this chapter while holding operating authority issued by the commission, or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain.

Pub. Util. Code § 5285.5. Investigation; penalties; revocation of permit

5285.5. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the commission shall investigate to determine whether the household goods carrier has filed a false statement relative to workers' compensation insurance coverage, in violation of statute, or rules or orders of the commission. If, after notice and opportunity to be heard, the commission determines that there has been a violation of statute, or rules or orders of the commission, the commission shall impose appropriate penalties, which may include a fine and suspension of operating authority for a violation.

(b) Upon receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any household goods carrier as a result of an award having been made to an employee pursuant to Section 3616.2 of the Labor Code, the commission shall, 30 days from the date the carrier is mailed the notice, revoke the carrier's permit unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the carrier requests a hearing pursuant to subdivision (c).

(c) Within seven days of receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any household goods carrier as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall furnish the carrier named in the final judgment written notice of the right to a hearing regarding the complaint and the procedure to follow to request a hearing. The notice shall state that the commission is required to revoke the carrier's permit to operate pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the carrier provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the commission has been so

notified seven days prior to the conclusion of the 30-day waiting period. The notice shall also inform the carrier of a right to a hearing and the procedures to follow to request a hearing. The carrier may request a hearing within 10 days from the date the notice is sent by the commission. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the commission finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the commission shall immediately revoke the carrier's permit.

Pub. Util. Code § 5285.6. Suspension of permit; recommendation of department; fee; notification; notice; hearing

5285.6. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the permit of a household goods carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose permit is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall then forward a request for reinspection to the department which shall then perform a reinspection within a reasonable time. The commission shall reinstate a carrier's permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the permit is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the household goods carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a

review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the permit of any household goods carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other penalty provided in this chapter, terminate the suspension, continue the suspension in effect, or revoke the permit. The commission may revoke the permit of any household goods carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the corporation has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a household goods carrier has continued to operate as such a carrier after its permit or permits have been suspended pursuant to subdivision (a), the commission shall do one of the following:

- (1) Revoke the operating permit or permits of the carrier.
- (2) Impose upon the holder of the permit or permits a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of unlawful operations.

Pub. Util. Code § 5378.5. Suspension of certificate or permit; recommendation of department; reinspection; fee; notice and hearing

5378.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate or permit of a charter-party carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's certificate or permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate or permit is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars (\$125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Public

Utilities Commission Transportation Reimbursement Account. The commission shall then forward a request for reinspection to the department which shall then perform a reinspection within a reasonable time. The commission shall reinstate a carrier's certificate or permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the certificate or permit is suspended for another reason, or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the charter-party carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in suspension or revocation of the carrier's certificate or permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate or permit of any charter-party carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other penalty provided in this chapter, terminate the suspension, continue the suspension in effect, or revoke the certificate or permit. The commission may revoke the certificate or permit of any carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

(e) If the commission, after a hearing, finds that a charter-party carrier has continued to operate as such a carrier after its certificate or permit has been suspended pursuant to subdivision (a), the commission shall do one of the following:

(1) Revoke the operating certificate or permit of the carrier.

(2) Impose upon the holder of the certificate or permit a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each day of unlawful operations.

Pub. Util. Code § 5378.6. Denial of application; recommendation of department; notice and hearing

5378.6. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that a new or renewal application for a charter-party carrier certificate or permit be denied either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety or (2) for failure to enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall deny the application. The department's written recommendation shall specifically indicate compliance with subdivision (b).

(b) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the applicant for the charter-party carrier certificate or permit of all of the following in writing:

(1) That the department has determined that the applicant's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a denial of the applicant's certificate or permit by the commission.

(3) That the applicant may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. The department shall, upon request, conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(c) Whenever the commission denies an application for renewal pursuant to subdivision (a), the commission shall furnish the charter-party carrier written notice of the denial and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the denial was improper or unwarranted. At the conclusion of the hearing, the commission may, in addition to any other remedy provided in this part, reverse the denial, or sustain the denial.

(d) Any applicant for a charter-party carrier certificate or permit denied pursuant to subdivision (a), whose denial has not been reversed as a result of the hearing provided for in subdivision (c), that wishes to obtain a certificate or permit shall reapply for the desired authority.

Pub. Util. Code § 5378.7. Investigation; revocation of permit; notice of right to hearing

5378.7. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the commission shall investigate to determine whether the charter-party carrier of passengers has filed a false statement relative to workers' compensation insurance coverage, in violation

of statute, or rules or orders of the commission. If, after notice and opportunity to be heard, the commission determines that there has been a violation of statute, or rules or orders of the commission, the commission shall impose appropriate penalties, which may include a fine and suspension of operating authority for a violation.

(b) Upon receipt of a complaint from the Director of Industrial Relations, that a final judgment has been entered against any charter-party carrier of passengers as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall, 30 days from the date the carrier is mailed the notice, revoke the carrier's permit unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the carrier requests a hearing pursuant to subdivision (c).

(c) Within seven days of receipt of a complaint from the Director of Industrial Relations that a final judgment has been entered against any charter-party carrier of passengers as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the commission shall furnish the carrier named in the final judgment written notice of the right to a hearing regarding the complaint and the procedure to follow to request a hearing. The notice shall state that the commission must revoke the carrier's permit to operate pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the carrier provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the commission has been so notified seven days prior to the conclusion of the 30-day waiting period. The notice shall also inform the carrier of a right to a hearing and the procedures to follow to request a hearing. The carrier shall have 10 days from the date the notice is sent by the commission to request a hearing. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the commission finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the commission shall immediately revoke the carrier's permit.

Pub. Util. Code § 5379.5. Cease and desist order to charter operator-party carrier operating without certificate or permit

5379.5. The commission may, on a complaint alleging that any corporation or person is operating as a charter-party carrier of passengers without a valid certificate or permit in violation of this chapter, or on its own motion without a complaint, with or without notice of a hearing, order the corporation or person so operating to cease and desist from that operation until the commission makes and files its decision in the matter or until further order of the commission.

Pub. Util. Code § 7726. Orders to cease and desist

7726. (a) When the secretary or the commission determines that any person has engaged in, is engaged in or threatens to engage in, any practice or act which

constitutes a violation of this article, or any regulation or order issued, adopted, or executed pursuant to this article, the secretary or commission may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the secretary or commission may be subject to such terms and conditions as the secretary or commission may determine are necessary to ensure compliance with this article.

(c) Any cease and desist order issued by the secretary or commission shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the secretary or commission shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

(e) The commission may authorize its executive director to exercise the commission's authority to issue cease and desist orders pursuant to this section.

Pub. Util. Code § 21216. Right of appeal; conclusiveness of decision

21216. Any person or entity injured or aggrieved by any procedure or action of the department with respect to aeronautics may appeal to the California Transportation Commission for relief, and the decision of the commission as to such matter shall, after hearing thereon, be conclusive, subject to such review as may be otherwise provided by law. This section shall not apply to any procedure or action for which a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is specified in this part as the means for reviewing or finalizing the procedure or action.

Pub. Util. Code § 21657. Refusal to issue permit; judicial review

21657. The department may refuse issuance of a permit under Section 21656 if it determines that the erection of or addition to a structure would obstruct the airspace overlying the state so as to create an unsafe condition for the flight of aircraft.

Any person denied a permit shall, upon request, be granted a hearing by the department to determine whether a permit shall be issued. The hearing shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pub. Util. Code § 21660. Refusal to issue permit; judicial review

21660. The department may refuse issuance of a permit under Section 21659 if it determines that the construction or alteration of the structure or growth of the natural growth would constitute a hazard to air navigation or create an unsafe condition for air navigation.

Any person denied a permit shall, upon request, be granted a hearing by the department to determine whether a permit shall be issued. The hearing shall be

held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pub. Util. Code § 21666. Requirements for issuance of permit

21666. The department shall issue a permit if it is satisfied that all of the following requirements have been met:

(a) The site meets or exceeds the minimum airport standards specified by the department in its rules and regulations, provided, however, that the department may modify its minimum airport standards when issuing a permit if it is satisfied that the airport will conform to minimum standards of safety.

(b) Safe air traffic patterns have been established for the proposed airport and for all existing airports and approved airport sites in its vicinity.

(c) The zone of approach of the airport has been engineered in conformity with the provisions of Section 21403, the documents relating thereto are available for public inspection.

(d) The department when issuing a permit may impose reasonable conditions which it deems necessary to effectuate the purposes of this article.

(e) The advantages to the public in selection of the site of a proposed new airport outweigh the disadvantages to the environment or, in the case of an amended permit, the advantages to the public of the proposed airport expansion outweigh the disadvantages to the environment. Environmental considerations include but are not limited to noise, air pollution, and the burden upon the surrounding area caused by the airport or airport expansion, including but not limited to, surface traffic and expense. The standards by which noise considerations are weighed shall be the level of noise acceptable to a reasonable person residing in the vicinity of the airport. The regulations adopted by the department pursuant to Section 21669 may be considered in determining such level of noise.

Each permit issued by the department shall set forth any conditions imposed thereon, and any modification of the general minimum airport standards prescribed by the department relative to such airport or airport site.

The department may refuse to issue a permit under this article if it determines that the requirements of this section have not been met. Any person denied a permit shall, upon request, be granted a hearing by the department to determine whether the permit should be issued.

Pub. Util. Code § 21669.6. Conduct of hearings

21669.6. Hearings under this article required by the provisions of Sections 21665, 21666, 21668, 21668.2, and 21669, or regulations adopted pursuant to such provisions, shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pub. Util. Code § 24251. Hearing on request

24251. The department shall provide for hearings upon request of any person who may be affected by its orders or acts under the provisions of this part and may provide for a stay thereof until a hearing may be had. All hearings held under this part shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code, and the department shall have all of the powers granted therein.